SUPREME COURT, U. S.
FILED
FEB 20 1980
MICHAEL RODAK, JR., CLERK

Nos. 79-421, 79-425, and 79-435

In the Supreme Court of the United States

OCTOBER TERM, 1979

JOHN M. BRYANT, ET AL., PETITIONERS

v.

BEN YELLEN, ET AL.

STATE OF CALIFORNIA, ET AL., PETITIONERS

v.

BEN YELLEN, ET AL.

IMPERIAL IRRIGATION DISTRICT, ET AL., PETITIONERS

v.

BEN YELLEN, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

LOUIS F. CLAIBORNE
Deputy Solicitor General

MARK I. LEVY
Assistant to the Solicitor General

PETER R. STEENLAND, JR.
RAYMOND N. ZAGONE
DIRK D. SNEL
Attorneys
Department of Justice
Washington, D.C. 20530

INDEX

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Statement	3
Summary of argument	11
Argument:	
I. The general excess-acreage limitation of Section 46 is applicable to private lands in the Imperial Irrigation District that receive federal project water pursuant to the Boulder Canyon Project Act	23
A. By their terms, Section 46 of the Omnibus Adjustment Act and Section 14 of the Boulder Canyon Project Act provide that the excess-acreage limitation is applicable to private lands in the Imperial Irrigation District	23
B. The legislative history of the Boulder Canyon Project Act does not demonstrate a congressional intent that the excess-acreage limitation be inapplicable to private lands in the Imperial Irrigation District	46
C. The administrative practice of the Department of the Interior does not render the excess-acreage limitation inapplicable to private lands in the Imperial Irrigation District	54

Argument—Continued Page

II. The 1933 decision of the California superior court in *Hewes* v. *All Persons* does not, as a matter of *res judicata* or comity, preclude consideration on the merits of the applicability of the excess-acreage limitation to private lands in the Imperial Irrigation District 68

III. Respondents Yellen, *et al.*, who have an interest in purchasing excess lands for farming as provided in the federal reclamation law, had standing under Article III to prosecute an appeal from the adverse judgment of the district court 76

Conclusion 87

CITATIONS

Cases:

Arizona v. *California*, 373 U.S. 546..... 7, 13, 31, 36, 38, 48
Automobile Club v. *Commissioner*, 353 U.S. 180 55
Baker v. *Carr*, 369 U.S. 186 79
Baltimore & Ohio R. Co. v. *Jackson*, 353 U.S. 325 55
Blair v. *Commissioner*, 300 U.S. 5 74
California v. *United States*, 438 U.S. 645 .....21, 29, 33, 75
City of Fresno v. *California*, 372 U.S. 627.. 76
City of Los Angeles v. *City of San Fernando*, 14 Cal.3d 199, 123 Cal. Rptr. 1, 537 P.2d 1250 74

Cases—Continued Page

Commissioner v. *Glenshaw Glass Co.*, 348 U.S. 426 66
Commissioner v. *Sunnen*, 333 U.S. 591.... 74
Duke Power Co. v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59.. 82
Ernst & Ernst v. *Hochfelder*, 425 U.S. 185 52
Gemsco, Inc. v. *Walling*, 324 U.S. 244.... 51
General Electric Co. v. *Gilbert*, 429 U.S. 125 56
Gladstone Realtors v. *Village of Bellwood*, 441 U.S. 91 86
Greenfield v. *Mather*, 32 Cal.2d 23, 194 P.2d 1 75
Helvering v. *Reynolds*, 313 U.S. 428..... 67
Hewes v. *All Persons*, No. 15460 (Cal. Super. Ct., Imperial Valley, July 1, 1933) 8
International Brotherhood of Teamsters v. *Daniel*, 439 U.S. 551 54
Ivanhoe Irrigation District v. *All Parties and Persons*, 47 Cal. 2d 597, 306 P.2d 824, rev'd *sub nom. Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, on remand, 53 Cal. 2d 692, 3 Cal. Rptr. 317, 350 P.2d 69 70-71
Ivanhoe Irrigation District v. *McCracken*, 357 U.S. 275 .....11, 24, 33, 35, 36, 37, 68, 72
Jones v. *Liberty Glass Co.*, 332 U.S. 524.. 67
Massachusetts Trustees v. *United States*, 377 U.S. 235 67
Montana v. *United States*, 440 U.S. 147.. 74
Morton v. *Ruiz*, 415 U.S. 199 ..... 54, 57

Cases—Continued Page

Pacific Tel. & Tel. Co. v. *City & County of San Francisco*, 197 Cal. App.2d 133, 17 Cal. Rptr. 687 74
Red Lion Broadcasting Co. v. *FCC*, 395 U.S. 367 53
SEC v. *Sloan*, 436 U.S. 103 ..... 54, 56-57
Simon v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 84
Skidmore v. *Swift & Co.*, 323 U.S. 134 56
Slater v. *Blackwood*, 15 Cal.3d 791, 126 Cal. Rptr. 225, 543 P.2d 593 75
Southeastern Community College v. *Davis*, No. 78-711 (June 11, 1979) 17, 54
State Farm Insurance Co. v. *Duel*, 324 U.S. 154 ..... 20-21, 73-74
Trafficante v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 86
TVA v. *Hill*, 437 U.S. 153 67
United States v. *California*, 332 U.S. 19 55
United States v. *E.I. duPont deNemours & Co.*, 353 U.S. 586 55
United States v. *Munsingwear, Inc.*, 340 U.S. 36 81
United States v. *San Francisco*, 310 U.S. 16 55
United States v. *SCRAP*, 412 U.S. 669 79
United States v. *Tulare Lake Canal Co.*, 535 F.2d 1093, cert. denied, 429 U.S. 1121 ..... 13, 25, 26, 32, 33, 35, 46, 80, 81
United States v. *Wise*, 370 U.S. 405 53
Utah Power & Light Co. v. *United States*, 243 U.S. 389 55
Village of Arlington Heights v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 ..... 22, 81

Cases—Continued Page

Warth v. *Selden*, 422 U.S. 490 ..... 23, 79
Yellen v. *Hickel*, 352 F. Supp. 1300, vacated, 559 F.2d 509 ..... 4, 7-8, 84
Zuber v. *Allen*, 396 U.S. 168 ..... 53, 54, 66

Constitution and statutes:

United States Constitution, Fourteenth Amendment 82
Act of May 26, 1924, ch. 192, 43 Stat. 171 6
Act of March 2, 1945, ch. 19, 59 Stat. 10 66
Boulder Canyon Project Act of 1928, ch. 42, 45 Stat. 1057, 43 U.S.C. 617 *et seq.*: 3
Section 1, 43 U.S.C. 617 ..... 14, 35, 39, 40, 41, 58
Section 4(b), 43 U.S.C. 617c(b) 8, 14, 35, 44, 45, 46, 57, 68
Section 5, 43 U.S.C. 617d 8, 35, 37, 38, 57, 58
Section 6, 43 U.S.C. 617e 13, 14, 31, 35, 39, 40
Section 8(b), 43 U.S.C. 617g(b) 29, 30
Section 9, 43 U.S.C. 617h 14, 41-42, 43, 44
Section 12, 43 U.S.C. 617k 28
Section 13(d), 43 U.S.C. 617*l*(d) 38
Section 14, 43 U.S.C. 617m ..... *passim*
Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81, 42 U.S.C. 3601 *et seq.* 82
Omnibus Adjustment Act of May 25, 1926, ch. 383, Section 46, 44 Stat. 649, 43 U.S.C. 423e ..... *passim*

Constitution and statutes—Continued — Page

Reclamation Act of 1902, ch. 1093, 32 Stat. 388, 43 U.S.C. 431 *et seq.*:
- Section 3, 43 U.S.C. 434 ..... 42, 43
- Section 5, 43 U.S.C. 431 .....9, 25, 40, 84
- Section 8, 43 U.S.C. 372 ..... 38, 41

Small Reclamation Projects Act of 1956, Pub. L. No. 94-181, 89 Stat. 1049, 43 U.S.C. 422e 56

43 U.S.C. 511 69

Miscellaneous:

2 R. Clark, *Waters and Water Rights* (1967) 11, 24, 33, 35-36, 70, 78, 80

68 Cong. Rec. (1927):
- p. 4291 49
- pp. 4291-4292 30

69 Cong. Rec. (1928):
- p. 7245 ..... 7, 46
- p. 7248 ..... 7, 26
- p. 7250 46
- p. 7252 43
- p. 7623 35
- p. 7626 41
- pp. 9989-9990 49

70 Cong. Rec. (1928):
- p. 67 ..... 16, 50
- p. 519 35
- p. 520 46
- p. 521 35
- p. 528 41
- p. 529 ..... 35, 41

Miscellaneous—Continued — Page

- p. 575 35
- p. 576 35
- p. 603 50
- p. 833 .....16, 46, 50

117 Cong. Rec. 46228 (1971) 60

125 Cong. Rec. S12473 (daily ed. Sept. 13, 1979) 81

125 Cong. Rec. (daily ed. Sept. 14, 1979):
- p. S12465 56
- p. S12571 36
- pp. S12571-S12572 5
- p. S12573 ..... 4, 5
- p. S12574 .....4, 5, 56
- p. S12575 5
- p. S12576 56
- pp. S12594-S12596 56

H.R. Rep. No. 1657, 69th Cong., 2d Sess. (1926) 49

Hearings on S. 14 and Other Bills Concerning Acreage Limitations and the Reclamation Act of 1902 Before the Subcomm. on Water and Power Resources of the House Comm. on Interior and Insular Affairs, 96th Cong., 2d Sess. (1979) 56

68 Interior Dec. 370 (1961) 81

36 Op. Att'y Gen. 121 (1929) 35

Rivers and Harbors Omnibus Bill: Hearings on H.R. 3961 Before a Subcomm. of the Senate Comm. on Commerce, 78th Cong., 2d Sess., Pt. V (1944) 65

Miscellaneous—Continued Page

S. 14, 96th Cong., 1st Sess., § 8 (1979) 56
S. Rep. No. 831, 69th Cong., 1st Sess. (1926) 46
S. Rep. No. 592, 70th Cong., 1st Sess. (1928) 40, 50, 52
Solicitor's Op. M-36634, 68 Interior Dec. 374 (1961) 81
Solicitor's Op. M-36675, 71 Interior Dec. 498 (1964) 40, 68
Solicitor's Op. M-36913, 86 Pub. Lands Dec. 306 (1979) 81
Solicitor's Op. M-36919, —— Pub. Lands Dec. —— (Dec. 6, 1979) 66, 80, 81, 84
R. Stern & E. Gressman, *Supreme Court Practice* (5th ed. 1978) 81

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-421

JOHN M. BRYANT, ET AL., PETITIONERS

v.

BEN YELLEN, ET AL.

No. 79-425

STATE OF CALIFORNIA, ET AL., PETITIONERS

v.

BEN YELLEN, ET AL.

No. 79-435

IMPERIAL IRRIGATION DISTRICT, ET AL., PETITIONERS

v.

BEN YELLEN, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-61a) is reported at 559 F.2d 509. The opinion of the court of appeals denying the petitions for rehearing (Pet. App. 64a-77a) is reported at 595 F.2d 524. The opinion of the district court (Pet. App. 78a-111a) is reported at 322 F. Supp. 11.

The order of the district court denying the motion of respondents Yellen, *et al.*, for leave to intervene (Pet. App. 112a-115a) is unreported. The order of the court of appeals reversing the district court's order and allowing intervention (Pet. App. 62a-63a) is reported as an appendix to the opinion of the court of appeals at 559 F.2d 509, 543-544.

JURISDICTION

The judgment of the court of appeals was entered on August 18, 1977 (Pet. App. 1a). The petition for rehearing was denied on April 23, 1979 (Pet. App. 64a). On July 3, 1979, Mr. Justice Rehnquist extended the time within which to file a petition for a writ of certiorari in No. 79-435 to and including September 14, 1979. On July 18, 1979, Mr. Justice Stevens granted similar extensions in Nos. 79-421 and 79-425. The petitions were filed on September 14, 1979, and were granted, and the cases consolidated, on December 3, 1979. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the general excess-acreage limitation of federal reclamation law (Section 46 of the Omnibus Adjustment Act of May 25, 1926, ch. 383, 44 Stat. 649, 43 U.S.C. 423e) is applicable to private lands in the Imperial Irrigation District that receive federal project water pursuant to the Boulder Canyon Project Act of 1928, ch. 42, 45 Stat. 1057, 43 U.S.C. 617 *et seq.*

2. Whether, as a matter of *res judicata* or comity, the 1933 decision of the California superior court in *Hewes* v. *All Persons* precludes consideration on the merits of the applicability of the excess-acreage limitation to private lands in the Imperial Irrigation District.

3. Whether respondents Yellen, *et al.*, who have an interest in purchasing excess lands for farming as provided in the federal reclamation law, had standing under Article III to prosecute an appeal from the adverse judgment of the district court.

STATEMENT

This case presents the question whether the general excess-acreage provision of federal reclamation law, which restricts to 160 acres the amount of private land held in single ownership that can receive water from a federal reclamation project, is applicable to the Imperial Valley. The court of appeals held that the Valley is subject to this acreage limitation pursuant to the Boulder Canyon Project Act of 1928. As a result, private landowners of more than 160 acres will no longer be entitled to receive federal project water for their excess lands unless they execute valid recordable contracts for the

sale of such lands under terms and conditions satisfactory to the Secretary of the Interior.

1. The Imperial Valley is located in southeastern California near the Mexican and Arizona borders. In its natural state, the Valley is an arid desert (Pet. App. 80a).[1] Through reclamation, however, it has become one of the richest and most productive agricultural areas in the United States.

The Imperial Irrigation District is the largest irrigation district in the country, with an annual agricultural production valued at more than $500,000,000 (125 Cong. Rec. S12573 (daily ed. Sept. 14, 1979) (remarks of Sen. Nelson); *id.* at S12574 (remarks of Sen. Dole)). The entire economy of the Valley is based on farming and related or supporting businesses (Pet. App. 18a-19a; *Yellen* v. *Hickel*, 352 F. Supp. 1300, 1316 (S.D. Cal. 1972), vacated on grounds of standing, 559 F.2d 509 (9th Cir. 1977)). The population of the Valley in the 1950's was about 75,000 people (352 F. Supp. at 1316) and, in 1966, immediately prior to the commencement of this action, approximately 438,000 acres in the Valley were irrigated with federal project water; at that time, some 800 owners, with a total of 233,000 acres, held land in excess of 160 acres (Pet. App. 17a, 79a, 83a).[2]

---

[1] "Pet. App." refers to the Appendix to the petition in No. 79-435.

[2] Of course, each of these owners is entitled to hold 160 acres to be irrigated by project water, and thus in 1966 the excess acreage amounted to approximately 105,000 acres.

More recent data (which, we are advised, were prepared by the District based on Department of Agriculture statistics) indicate that the largest ownership in the Valley consists of 15,000 acres; that there are 973 farms in the Valley, of which 103 exceed 1280 acres, 188 exceed 640 acres, and 275 exceed 320 acres; that, of a total number of 3752 ownerships (as distinguished from farm operations), 1.8% of the ownerships exceed 1280 acres and 5% exceed 640 acres; that farms in excess of 1280 acres account for more than 60% of the farm land, while farms in excess of 640 acres account for more than 78% of the farm land; and that the average farm size is 82 acres. See 125 Cong. Rec. S12571-S12572 (daily ed. Sept. 14, 1979) (remarks of Sen. Nelson); *id.* at S12573 (remarks of Sen. Hatch); *id.* at S12574 (remarks of Sen. Dole); *id.* at S12575 (remarks of Sen. Cranston). From these data, it appears that relatively few owners in the Valley hold excess acreage but that such holdings constitute a predominant portion of the farm land in the area.

2. As early as the mid-nineteenth century, it was recognized that water could be diverted from the Colorado River and delivered by gravity flow to the Imperial Valley, which is almost entirely below sea level. The California Development Company, a private corporation, was organized in 1896 to undertake this diversion of water to the Valley. The water was diverted from the River just north of the boundary between the United States and Mexico and carried by canal to the Valley. The canal ran through Mexico for approximately 50 miles along the dry bed of the Alamo River, and accordingly was called the Alamo Canal. The first water was diverted from the Colorado River to the Valley in 1901. By 1903, approximately 25,000 acres in the Valley were under irrigation (Pet. App. 2a-3a, 79a-81a).

In 1905, the Colorado River broke through its banks and flooded the Alamo Canal and the Imperial

Valley. The California Development Company was unable to control the River, and the flood threatened to destroy the entire valley.[3] The Southern Pacific Company, in order to protect the tracks of its railroad, subsequently advanced funds to assist the water company in its effort and took back a controlling interest in that company as security.[4] The Southern Pacific eventually returned the River to its channel and closed the breach in the banks. In 1916, the Southern Pacific foreclosed on the California Development Company's interests and, in June of that year, transferred those interests to the Imperial Irrigation District. In 1922-1923, the District acquired the seven mutual water companies that had been established by the California Development Company, and since that time it has been solely responsible for the diversion, transportation, and distribution of water from the Colorado River to the Imperial Valley (Pet. App. 3a, 81a-82a).

3. Diversion of water from the Colorado River continued to present difficult problems for the Imperial Valley. The possibility of flooding was a persistent concern, and constant effort was needed to control the River. The River, with its erratic flow, was also an undependable source of water, and there

[3] In the process, the flood created the Salton Sea, which previously had been a virtually dry area 273 feet below sea level and which after the flood had a surface area of 330,000 acres at an elevation of 190 feet below sea level (Pet. App. 82a).

[4] The Southern Pacific was later reimbursed by the United States. See Act of May 26, 1924, ch. 192, 43 Stat. 171.

were recurring shortages at certain times of the year. In addition, erosion of the soil and the deposit of silt fouled the water, blocked irrigation works, and damaged the land and crops in the Valley. Finally, unauthorized appropriations of water were occurring in Mexico, and there was concern that the very security of the Canal was in the control of a foreign country. Solution of these problems through the efforts of local groups and individual states proved impossible (Pet. App. 3a-4a; *Arizona* v. *California*, 373 U.S. 546, 553-554, 579, 588 (1963)).[5]

After protracted consideration between 1922 and 1928, Congress enacted the Boulder Canyon Project Act of 1928. At the time, the Boulder Canyon Project was the largest reclamation project ever undertaken in the United States (69 Cong. Rec. 7245, 7248 (1928) (statement of Sen. Johnson)). The Act authorized the construction of the Boulder (now Hoover) Dam and related facilities, and also provided for a canal to be built entirely in the United States—thus called the All-American Canal—to carry water to the Imperial and Coachella Valleys. The Act became effective in 1929,[6] and construction of

[5] At this time, there also arose the broader issue of the proper distribution of water from the Colorado River among the several western states. This issue was addressed in the Colorado River Compact of 1922 (Pet. App. 3a-4a, 82a & n.1; 373 U.S. at 555-559).

[6] In 1929, the population of the Imperial Valley was approximately 60,000 people (*Yellen* v. *Hickel*, 352 F. Supp. 1300,

the Dam was completed in 1935. The All-American Canal was begun in 1934, and delivery of water to the Imperial and Coachella Valleys commenced in 1940. Since 1942, the Valleys' entire water supply has been carried through the All-American Canal (Pet. App. 4a, 83a-84a; 373 U.S. at 560)

4. In 1932, as required by Sections 4(b) and 5 of the Project Act, the Secretary of the Interior and the Imperial Irrigation District entered into a contract for the delivery of project water to the District and the repayment by the District of charges for constructing the Canal. Pursuant to Article 31 of the contract and applicable federal and state law, the District brought an action in state court to confirm the validity of the contract. *Hewes* v. *All Persons*, No. 15460 (Cal. Super. Ct., Imperial Valley, July 1, 1933) (Pet. App. 120a-154a). A companion case was also filed by Charles Malan, a private landowner in the Valley, who objected to the contract on the ground that project water would not be furnished to his land in excess of 160 acres. The California superior court, considering *Hewes* and *Malan* together, confirmed the validity of the contract and stated that Malan's excess acreage would not be denied water from the Project.

5. In connection with the state-court litigation, Secretary of the Interior Wilbur, at the request of the Imperial Irrigation District, wrote a letter in

1316 (S.D. Cal. 1972), vacated on grounds of standing, 559 F.2d 509 (9th Cir. 1977)), and 424,145 acres in the Valley were in irrigated cultivation (Pet. App. 81a).

1933 stating that the excess-acreage limitation of Section 5 of the 1902 Reclamation Act was inapplicable in the District. In 1945, the Wilbur letter was criticized by Solicitor of the Interior Harper in a formal opinion that applied the excess-acreage limitation to the Coachella Valley of California, which, like the Imperial Valley, receives federal water under the Boulder Canyon Project Act. Secretary Krug in 1948, and Solicitor Bennett in 1958, declined to overturn the Wilbur letter, expressing the view that, regardless of the legal merits of the issue, it would be unfair to apply the excess-acreage limitation to the Imperial Valley. However, on two occasions in 1958, Solicitor General Rankin stated to this Court on behalf of the United States that the Valley was subject to the excess-acreage provision of reclamation law. In 1964, Solicitor Barry in a formal opinion expressly rejected the Wilbur letter and concluded that the excess-acreage limitation was applicable to the Imperial Valley (Pet. App. 48a-56a, 101a-109a; A. 181a-266a).[7]

6. Following the failure of negotiations between the United States and the District to amend the contract to reflect the Barry opinion, the United States in 1967 commenced this suit against the Imperial Irrigation District for a declaratory judgment that the excess-acreage limitation of Section 46 of the Omnibus Adjustment Act of 1926, ch. 383, 44 Stat. 649, 43 U.S.C. 423e (Pet. App. 172a-173a), is applicable to

[7] "A." refers to the Appendix to the briefs on the merits in Nos. 79-421, 79-425, 79-435.

private lands in the Imperial Valley that receive federal project water pursuant to the Boulder Canyon Project Act of 1928. Several landowners, both individually and as representatives of all persons owning more than 160 acres of private land in the Valley, and the State of California were permitted to intervene as defendants (Pet. App. 79a). In 1971, the district court denied the government's request for relief (*id.* at 78a-111a; A. 317a-318a). The United States decided not to appeal. At the same time, Dr. Yellen and other residents of the Valley, who had participated as amici in the district court and who desired to purchase the excess lands, sought to intervene for purposes of appeal. The district court denied this motion (Pet. App. 112a-115a), but intervention was subsequently allowed by the court of appeals (*id.* at 62a-63a). In the ensuing appeal prosecuted by the intervenors, the court of appeals held that the intervenors had standing under Article III to seek review of the district court's decision; that the 1933 judgment of the California superior court in *Hewes* v. *All Persons* was not *res judicata* on the excess-acreage issue; that the language, purpose, and legislative history of Section 46 and the Boulder Canyon Project Act demonstrated that the excess-acreage limitation is applicable to the Imperial Valley; and that the Department's administrative practice between 1933 and 1964 did not bar application of the excess-acreage provision (*id.* at 1a-61a). The court of appeals thereafter denied petitions for rehearing, again finding that the intervenors had standing under Article III to pursue an appeal and also

holding that such standing did not abate upon repayment by the District of one-half of the construction charges for the All-American Canal (*id.* at 64a-70a).

SUMMARY OF ARGUMENT

I.

A.

From its enactment in 1902, the federal reclamation law has generally limited to 160 acres the amount of private land in single ownership that is eligible to receive water from a reclamation project. This excess-acreage limitation has "been national policy" since that time (*Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 292 (1958)) and "is, in every respect, the most important part of reclamation law" (2 R. Clark, *Waters and Water Rights* § 120, at 209 (1967)). The purposes of the excess-acreage limitation are both fundamental and well-established: to open lands to settlement by farmers of modest means and allow the establishment of family farms; to distribute widely the benefits of the federal reclamation project; and to prevent speculation and disproportionate gain by those who own or can acquire large holdings of land benefited by the project.

The excess-acreage limitation at issue in this case is contained in Section 46 of the Omnibus Adjustment Act of May 25, 1926 (43 U.S.C. 423e, Pet. App. 174a-175a), which provides that private lands held by one owner in excess of 160 acres shall not receive water from any federal reclamation project there-

after completed unless the owner executes a valid recordable contract for the sale of such excess lands under terms and conditions satisfactory to the Secretary of the Interior. On its face, Section 46 is applicable to the Boulder Canyon Project, which was authorized in December 1928. Accordingly, unless superseded by some other provision of law, the excess-acreage limitation of Section 46 governs the receipt of federal project water by private lands in the Imperial Irrigation District. And, as the Court noted in *Ivanhoe, supra*, "where a particular project has been exempted [from the general excess-acreage limitation] because of its peculiar circumstances, Congress has always made such exemption by express enactment" (357 U.S. at 292). If petitioners were to prevail, the Imperial Irrigation District would be the only instance in which a federal reclamation project has been exempted from the excess-acreage limitation by implication rather than by explicit congressional directive.

The applicability of the excess-acreage limitation of Section 46 to the Imperial Irrigation District is confirmed by Section 14 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617m, Pet. App. 166a), which states that the Act "shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided." Thus, Section 14 incorporates into the Boulder Canyon Project Act the general provisions of reclamation law, including the excess-

acreage limitation, "except as otherwise * * * provided."

Nothing in the Project Act precludes the applicability of the excess-acreage limitation to private lands in the Imperial Valley. Application of the excess-acreage limitation would not interfere with the satisfaction of present perfected rights based on prior use of water from the Colorado River, which rights are recognized in Section 6 of the Act (43 U.S.C. 617e, Pet. App. 162a-163a) as construed in *Arizona* v. *California*, 373 U.S. 546 (1963), decree, 376 U.S. 340 (1964), supplemental decree, 439 U.S. 419 (1979). The circumstance that the Imperial Valley had previously been under private irrigation does not distinguish the Boulder Canyon Project Act from most other federal reclamation programs, for, as the court of appeals found, "[i]t is usually true that private lands [in reclamation projects] are already under irrigation through facilities developed at private expense * * *" (Pet. App. 48a, quoting *United States* v. *Tulare Lake Canal Co.*, 535 F.2d 1093, 1143 (9th Cir. 1976), cert. denied, 429 U.S. 1121 (1977)). Moreover, the doctrine of present perfected rights is designed to "fetter the Secretary's discretion" (*Arizona* v. *California, supra*, 373 U.S. at 581) by setting an " 'order of priority' " (*id.* at 583 n.84) in the allocation of water under the Project Act to those who are entitled to receive it. This limitation on the Secretary's authority does not decide the antecedent issue of eligibility to receive that project water in the first instance; instead, the terms and condi-

tions of eligibility are prescribed by Congress. Thus, Section 6 is simply immaterial to Congress' determination, in Section 46 of the Omnibus Adjustment Act and Section 14 of the Project Act, that excess lands shall not receive federal water. Finally, even if Section 6 were pertinent here, the present perfected rights recognized in the Act reside in the Imperial Irrigation District rather than in the individual landowners. Therefore, since it does not affect the total quantity of water available to the District, the 160-acre restriction on the lands held by each owner that can receive project water is not inconsistent with the satisfaction of present perfected rights.

Likewise, none of the other provisions of the Project Act suggests the inapplicability of the excess-acreage limitation to private lands in the Imperial Irrigation District. Section 1 of the Act (43 U.S.C. 617, Pet. App. 155a-156a), in providing that no charge shall be made for the use or delivery of project water in the District, does not indicate that the District is exempt from the excess-acreage limitation. Rather, this provision was intended only to avoid the possible unfairness of imposing a charge for water upon landowners who had a pre-existing right of use. Section 9 of the Act (43 U.S.C. 617h, Pet. App. 165a-166a) does not apply the excess-acreage limitation to public lands, but serves only to require the withdrawal from entry of such lands susceptible of reclamation and to limit their subsequent reopening to tracts not exceeding 160 acres in size. Finally, Section 4(b) of the Act (43 U.S.C. 617c(b), Pet. App. 158a-159a)

does not render the excess-acreage limitation inapplicable to the District. While Section 4(b) may differ from Section 46 in the particular provisions regarding the nature of the agreement with the Secretary for repayment of costs and delivery of water, the identity of the party to enter into the agreement on behalf of the landowners, and the time in which to execute the agreement, none of these variances bears on the excess-acreage limitation, and it is entirely feasible to comply with both the specific provisions of Section 4(b) and the excess-acreage provision of Section 46.

B.

The legislative history of the Boulder Canyon Project Act does not demonstrate a congressional intent that the excess-acreage limitation be inapplicable to the Imperial Valley. Given that Section 46, a provision of central importance to the reclamation law, had been passed less than two years before the Project Act, the exclusion of the Valley from the excess-acreage limitation would most likely have been the subject of extensive deliberation and thorough analysis in Congress. However, the excess-acreage issue arose at all on only a handful of occasions during the protracted six-year history of the Act, and none of these involved the careful consideration and extended debate that could be expected to accompany such a measure. This circumstance, by itself, makes it most improbable that Congress intended the excess-acreage restrictions to be inapplicable to the Imperial Valley.

At all events, a detailed examination of the legislative history fails to evince a congressional intent to exempt the Imperial Valley from the general excess-acreage limitation. In their final forms, both the House and Senate bills contained the provision now found in Section 14 that the Act is a supplement to the reclamation law and that the Project shall be governed by the reclamation law except as otherwise provided. The House bill also expressly provided that the excess-acreage limitation would be applicable, while the Senate bill did not. But this difference was not treated as a matter of substance. The House passed its version of the bill and sent it to the Senate. Senator Johnson, the sponsor of the Senate bill, explained that the House and Senate bills had "like purposes" and "like designs." 70 Cong. Rec. 67 (1928). The Senate ultimately passed its version of the bill, without the explicit excess-acreage provision. The Senate bill was then considered in the House. Congressman Swing, the sponsor of the House bill, urged that the Senate bill be passed, stating that "[t]he only differences [between the House and Senate bills], it seems to me, are matters relatively of small importance compared with the beginning of this great project." *Id.* at 833. The House accepted the Senate bill without any discussion of the omission of the express excess-acreage limitation contained in the bill it had previously adopted.

In our view, the legislative history suggests that Section 14 of the Project Act, which was found in all versions of the measure, was designed to incorporate

the excess-acreage limitation of federal reclamation law. At the least, this legislative history does not refute the conclusion, derived from the language of the statutes and the fundamental purposes of the reclamation law, that the excess-acreage limitation is applicable to the Imperial Irrigation District. Likewise, isolated statements in the Senate by opponents of the bill, based on their view that the Senate bill did not include the excess-acreage limitation, cannot serve to exempt the District from this basic provision of federal reclamation law.

C.

The past administrative practice of the Department of the Interior not to apply the excess-acreage limitation to the Imperial Valley does not exempt the Valley from the statutory limitation. The deference due the administrative interpretation of a statute "is constrained by * * * [the Court's] obligation to honor the clear meaning of a statute, as revealed by its language, purpose and history." *Southeastern Community College* v. *Davis*, No. 78-711 (June 11, 1979), slip op. 12. As discussed above, the language and purpose of the statutes, uncontradicted by the legislative history of the Project Act, establish that the excess-acreage limitation is applicable to the Imperial Valley and that the Department's prior position to the contrary was erroneous and unauthorized.

Moreover, the Department's practice in this regard is not sufficient to warrant deference by the Court. In a 1933 letter to the Imperial Irrigation District, Secretary Wilbur stated that the Imperial Valley was

not subject to the excess-acreage provision of the 1902 Reclamation Act. In 1945, Solicitor of the Interior Harper concluded in a formal opinion that the excess-acreage limitation of Section 46 of the 1926 Omnibus Adjustment Act was applicable to the neighboring Coachella Valley, which, like the Imperial Valley, receives water under the Boulder Canyon Project Act. In reaching this conclusion, Solicitor Harper rejected the approach previously taken by Secretary Wilbur and severely criticized the 1933 letter to the District. However, because the Wilbur letter was confined to the Imperial Valley and did not pertain to the Coachella Valley, it was not expressly overturned.

In 1948, Secretary Krug was requested to reconsider the Wilbur letter. Without addressing the merits of the issue, he decided not to disturb the Department's position "in fairness to those who have relied on * * * [the Wilbur letter], even though that action might now be subject to valid question" (A. 254a). A similar view was expressed in 1958 by Solicitor Bennett, who noted that he had "not had occasion to undertake a legal analysis of the respective views heretofore expressed by Secretary Wilbur and former Solicitor Harper" but that "[w]hatever the conclusion might be, to my mind the time has long since passed when it is realistic and practicable to do so" (A. 255a). However, despite his awareness of Solicitor Bennett's view, Solicitor General Rankin in 1958, in connection with *Ivanhoe Irrigation District* v. *McCracken, supra,* and *Arizona* v. *California, supra,* twice argued on behalf of the United States that the

excess-acreage limitation was applicable to the Imperial Valley.

In 1964, Solicitor Barry undertook a thorough review of the excess-acreage issue concerning the Imperial Valley. After carefully considering the language and purpose of the relevant statutes, the legislative history of the Boulder Canyon Project Act, and the administrative practice with respect to the Imperial Valley, Solicitor Barry concluded in a formal opinion that the excess-acreage limitation was applicable to private lands in the Valley. In particular, Solicitor Barry criticized the Wilbur letter on several grounds and found that "[t]he interpretation in the Wilbur letter of the meaning of the Project Act was clearly wrong and could not effect a change in the statutes enacted by Congress" (A. 210a). Solicitor Barry's opinion was accepted by the Department and has been consistently adhered to since that time.

Thus, throughout the period 1933-1964, the only basis for the Department's position on the excess-acreage issue was Secretary Wilbur's letter in 1933. Until Solicitor Barry's re-examination of the question in 1964, the Department either criticized the Wilbur letter but did not expressly overrule it, as in Solicitor Harper's 1945 opinion, or abided by the Wilbur letter for reasons other than its substantive validity, as in Secretary Krug's 1948 letter and Solicitor Bennett's 1958 memorandum. The correctness of the Wilbur letter has been soundly discredited by Solicitors Harper and Barry, and the Solicitor General on two

previous occasions has argued on behalf of the United States that the excess-acreage limitation does apply to the Imperial Valley. In these circumstances, the administrative practice is simply inadequate to offer controlling guidance on the excess-acreage issue.

II.

The 1933 decision of the California superior court in *Hewes* v. *All Persons*, which confirmed the contract between the Secretary and the District, does not as a matter of *res judicata* preclude consideration on the merits of the excess-acreage issue. The sole issue in the *Hewes* confirmation proceeding was the validity of the contract. Thus, when the court concluded that the limitation was inapplicable under the statutes, it impermissibly exceeded the bounds of its limited jurisdiction. Nor was this aspect of the court's decision necessary to its holding on the validity of the contract. The contract was silent on the applicability of the excess-acreage limitation, and hence disposition of the statutory question could not have rendered it invalid under either federal or state law.

Moreover, even if the 1933 judgment of the California superior court had properly decided the excess-acreage issue, it would not foreclose re-examination of the issue in this case. The preclusive effect of *Hewes* is governed by the "general rule that *res judicata* is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation." *State Farm Insurance Co.* v. *Duel*, 324 U.S. 154, 162 (1945). Here, there have been a number of legal developments since 1933 that are pertinent to the proper resolution of the excess-acreage issue—for example, the Interior Department's continued consideration of the question, culminating in Solicitor Barry's formal opinion in 1964 that the excess-acreage limitation does apply to the District; this Court's unanimous decision in 1957 in *Ivanhoe Irrigation District* v. *McCracken*, *supra*, which explicated, in the context of a confirmation proceeding, the excess-acreage limitation and its effect on water rights vested under state law; the Court's decision and decrees in *Arizona* v. *California*, *supra*, involving the Boulder Canyon Project Act and the concept of "present perfected rights"; and the decision in *California* v. *United States*, 438 U.S. 645 (1978), on which petitioners rely (79-421 Br. 58; 79-435 Br. 29 n.20, 38) to support their view of both the paramount importance of vested rights in this area and the principle of deference under the reclamation law to state policies and procedures. It cannot reasonably be doubted that, whatever the ultimate outcome, such developments bear centrally on the excess-acreage issue presented in this case. Furthermore, application of the principle recognized in *Duel* is especially appropriate where, as here, the underlying substantive issue is of continuing public importance. Therefore, the 1933 decision in *Hewes* does not bar consideration of the excess-acreage issue on the merits.

III.

The private respondents, intervenors below and amici in the district court, had standing under Article III to seek appellate review of the district court's adverse judgment on the excess-acreage issue. Respondents reside in the Imperial Valley and desire to purchase the excess lands for farming, but they cannot afford the current market price of $1200 to $1400 per acre. If the excess-acreage limitation is applicable, however, excess lands will no longer receive project water unless, as provided in Section 46, the owners execute valid recordable contracts to sell such lands at prices that do not reflect the use of water from the Boulder Canyon Project. The value of these lands, appraised as dry lands, is a fraction of their value as irrigated or potentially irrigable lands, and has been estimated to be only $25 to $50 per acre. Moreover, as the court of appeals found (Pet. App. 18a, 20a), land in the Valley will not be available to respondents at below-market prices unless the excess-acreage limitation is applicable; on the other hand, application of the limitation will likely result in sales of excess acreage (Pet. App. 18a-19a, 67a). Thus, as in *Village of Arlington Heights* v. *Metropolitan Development Corp.*, 429 U.S. 252, 264 (1977), a judicial decree enforcing the excess-acreage provision would afford respondents the "opportunity" they seek to acquire such lands.

In these circumstances, it is clear that respondents have " 'alleged * * * a personal stake in the outcome of the controversy' " presented in this litigation and

have asserted "a distinct and palpable injury to * * * [themselves]" that is directly affected by the excess-acreage issue. *Warth* v. *Seldin*, 422 U.S. 490, 498, 501 (1975). Accordingly, they had standing under Article III to appeal from the district court's decision that the excess-acreage limitation is inapplicable to the Imperial Valley.

ARGUMENT

I. THE GENERAL EXCESS-ACREAGE LIMITATION OF SECTION 46 IS APPLICABLE TO PRIVATE LANDS IN THE IMPERIAL IRRIGATION DISTRICT THAT RECEIVE FEDERAL PROJECT WATER PURSUANT TO THE BOULDER CANYON PROJECT ACT

A. By Their Terms, Section 46 Of The Omnibus Adjustment Act And Section 14 Of The Boulder Canyon Project Act Provide That The Excess-Acreage Limitation Is Applicable To Private Lands In The Imperial Irrigation District

1. Since its enactment in 1902, the federal reclamation law has generally limited to 160 acres the amount of private land in single ownership that is eligible to receive water from a reclamation project.[8] "Acreage limitation is, in every respect, the most important

[8] Lands of more than 160 acres held by a single owner are commonly referred to as "excess lands." It should be noted that reclamation law has been administered to treat each adult owner separately, regardless of familial or other relationships. Moreover, as the court of appeals correctly noted (Pet. App. 6a n.2), a husband and wife in a community-property state, such as California, may receive project water for 320 acres under the reclamation law.

part of reclamation law." 2 R. Clark, *Waters and Water Rights* § 120, at 209 (1967). As the Court observed in *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 291, 292 (1958), the excess-acreage limitation "is a specific and mandatory prerequisite laid down by the Congress as binding in the operation of reclamation projects" and has "been national policy for over half a century."

The purposes of the excess-acreage limitation are well established and were described by the Court in *Ivanhoe* as follows (357 U.S. at 292, 297):

> From the beginning of the federal reclamation program in 1902, the policy as declared by the Congress has been one requiring that the benefits therefrom be made available to the largest number of people, consistent, of course, with the public good. This policy has been accomplished by limiting the quantity of land in a single ownership to which project water might be supplied.
>
> * * * * *
>
> The [reclamation] project was designed to benefit people, not land. It is a reasonable classification to limit the amount of project water available to each individual in order that benefits may be distributed in accordance with the greatest good to the greatest number of individuals. The limitation insures that this enormous expenditure will not go in disproportionate share to a few individuals with large land holdings. Moreover, it prevents the use of the federal reclamation service for speculative purposes. In short, the excess acreage provision acts as a ceiling, imposed equally upon all participants, on the federal subsidy that is being bestowed.

As succinctly summarized in *United States* v. *Tular Lake Canal Co.*, 535 F.2d 1093, 1094 (9th Cir. 1976), cert. denied, 429 U.S. 1121 (1977), the excess-acreage limitation is designed "to open private land to settlement by farmers of modest means, to insure wide distribution of the benefits of the federal investment in the reclamation project, and to prevent private landowners from realizing a disproportionate windfall advantage from enhanced productivity and land values because of the project." [9]

The excess-acreage limitation, first enacted in Section 5 of the Reclamation Act of 1902, ch. 1093, 32 Stat. 389, as amended, 43 U.S.C. 431 (Pet. App. 173a), has been consistently retained and strength-

---

[9] See also 535 F.2d at 1099-1100 ("wide dispersion of the public subsidy, avoidance of speculation, and provision of family homes and farms"), 1103 ("spreading the federal subsidy, preventing speculation, and making it possible for people of limited means to establish farms on irrigated lands on which families could be self-sustaining"), 1119 ("secure the division and redistribution on a nonspeculative basis of large private land holdings receiving the subsidy of government-financed irrigation benefits"), *ibid.* ("create family-sized farms in areas irrigated by federal projects * * * [,] secure the wide distribution of the substantial subsidy involved in reclamation projects and limit private speculative gains resulting from the existence of such projects[,] * * * [and] effect the breakup of large tracts of private lands on reclamation projects and assure the redistribution of such lands in small tracts at nonspeculative prices"), 1132 ("encourage family farms, distribute the reclamation subsidy widely, and avoid speculation").

ened in a series of successive statutes that culminated in Section 46 of the Omnibus Adjustment Act of May 25, 1926, ch. 383, 44 Stat. 649, 43 U.S.C. 423e (Pet. App. 174a-175a). See generally *Tulare Lake, supra*, 535 F.2d at 1123-1136; Solicitor's Op. M-36919 (Dec. 6, 1979), at 19-38, —— Pub. Lands Dec. ——; A. 232a. Section 46 provides in pertinent part:

> No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. * * * Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any said lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior * * *.

Section 46 was enacted in May 1926 and, by its terms, is applicable to "any new project," including, in particular, the Boulder Canyon Project that was authorized 19 months later. Accordingly, unless superseded by some other provision of law, the excess-acreage limitation of Section 46 governs the receipt of federal project water by private lands in the Imperial Irrigation District. And, as the Court noted in *Ivanhoe, supra*, "where a particular project has been exempted [from the general excess-acreage limitation] because of its peculiar circumstances, the Congress has always made such exemption by express enactment" (357 U.S. at 292).[10]

---

[10] We are advised that, should petitioners prevail, the Imperial Irrigation District would be the only instance in which a federal reclamation project has been exempted from the excess-acreage limitation by implication rather than by explicit congressional directive.

The applicability of the excess-acreage limitation of Section 46 to the Imperial Irrigation District is confirmed by Section 14 of the Boulder Canyon Project Act of 1928, ch. 42, 45 Stat. 1065, 43 U.S.C 617m (Pet. App. 166a), which reads:

> This Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided.[11]

On its face, Section 14 incorporates into the Boulder Canyon Project Act the general provisions of the reclamation law, including the excess-acreage limitation of Section 46, "except as otherwise * * * provided." [12]

Petitioners contend (79-421 Br. 40-42; 79-425 Br. 13) that the excess-acreage provision does not pertain to the "construction, operation, and management" of the project and therefore is not subsumed in Section 14. In their view, this phrase is confined "to the business and fiscal aspects of project management, and not to matters of social control, such as acreage limitation, governing water deliveries" (79-421 Br.

---

[11] It is uncontroverted that Section 46 is part of the "reclamation law" as an act "amendatory [of] * * * and supplemental [to]" the 1902 Reclamation Act (Section 12 of the Boulder Canyon Project Act, ch. 42, 45 Stat. 1064, 43 U.S.C. 617k, Pet. App. 116a).

[12] See also Article 30 of the contract between the Secretary and the District (Pet. App. 203a).

40).[13] This argument is largely irrelevant, however, for even in the absence of this portion of Section 14, the excess-acreage limitation would apply to the District by virtue of Section 46 of the Omnibus Adjustment Act except as specifically provided to the contrary in the Boulder Canyon Project Act. In any event, as a matter of common usage, the phrase "operation and management" seems sufficiently broad to encompass the entire process involved in supplying project water, including the terms and conditions imposed upon the receipt of that water. This construction is also consistent with Section 8(b) of the Boulder Canyon Project Act, ch. 42, 45 Stat. 1062, 43 U.S.C. 617g(b) (Pet. App. 164a), which refers to "constructing, *managing, and operating* the dam, reservoir, canals, and other works herein authorized, *including the appropriation, delivery, and use of the water*" (emphasis added). Finally, and of greater importance, petitioners' argument ignores the fact that the very contracts required by Section 46, which

---

[13] The consequence of this argument is that lands in the neighboring Coachella Valley, which are also governed by the Boulder Canyon Project Act, would likewise be exempt from the excess-acreage limitation of Section 46—a result that has never been suggested and is plainly untenable. See note 20, *infra*.

Moreover, as the Court noted in *California* v. *United States*, 438 U.S. 645, 651 n.6 (1978), "in the case of all * * * reclamation projects, Congress [has] specifically directed that * * * [they] be constructed and operated 'pursuant to Federal reclamation laws' * * *." Acceptance of petitioners' argument here would cast doubt on the applicability of the general excess-acreage limitation to all of those other projects.

include the excess-acreage limitation, expressly pertain to the "payment by the [irrigation] district or districts of the cost of constructing, *operating*, and maintaining the works" (emphasis added) and do not relate to the delivery of water.[14] Thus, Section 14 of the Boulder Canyon Project Act, in light of the ordinary meaning of its terms, the language employed in Section 8(b) of the Act, and the text of Section 46 of the Omnibus Adjustment Act, manifestly incorporates the general excess-acreage limitation of federal reclamation law.

2. Petitioners also contend that Section 46 is inconsistent with several provisions of the Boulder Canyon Project Act and that the excess-acreage limitation is therefore inapplicable because the Project Act has, in the words of Section 14, "otherwise * * * provided." However, nothing in the Act precludes the applicability of the excess-acreage restriction to private lands in the Imperial Valley.

a. Petitioners' principal assertion (79-421 Br. 29-33; 79-425 Br. 12, 13-14; 79-435 Br. 25-38) is that the lands in the Imperial Irrigation District were being cultivated through private irrigation before the passage of the Boulder Canyon Project Act and that application of the general excess-acreage limitation to those lands is therefore incompatible with

[14] We also note that Senator Johnson, the author of the Boulder Canyon Project Act, recognized that the Project Act incorporated provisions of the reclamation law, such as Section 8 of the 1902 Reclamation Act (Pet. App. 173a), that were unrelated to the business or fiscal aspects of the project. See 68 Cong. Rec. 4291-4292 (1927).

Section 6 of the Act, as construed in *Arizona* v. *California*, 373 U.S. 546 (1963), decree, 376 U.S. 340 (1964), supplemental decree, 439 U.S. 419 (1979), which provides that the Project "shall be used * * * second, for irrigation and domestic uses and satisfaction of present perfected rights * * *" (45 Stat. 1061, 43 U.S.C. 617e, Pet. App. 163a).[15]

However, the circumstance that these lands had previously been irrigated by private means does not distinguish the Boulder Canyon Project Act from most other federal reclamation programs. As the

[15] As defined in *Arizona* v. *California*, *supra*, 376 U.S. at 341, "perfected right"

> means a water right acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition shall include water rights created by the reservation of mainstream water for the use of federal establishments under federal law whether or not the water has been applied to beneficial use;

and "present perfected rights"

> means perfected rights, as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act * * *.

In 1929, 424,125 acres in the Imperial Irrigation District were being irrigated; approximately 438,000 acres were in irrigation in 1966, immediately prior to the commencement of this litigation (Pet. App. 81a, 83a; 439 U.S. at 429). Of course, petitioners' argument on present perfected rights is limited to the acreage that was receiving water in 1929 and does not extend either to the more recently irrigated acreage or to additional acreage that might be furnished water in the future.

court below stated (Pet. App. 48a, quoting *Tulare Lake, supra,* 535 F.2d at 1143):

> It is usually true that most of the land included in a reclamation project is privately owned; it is usually true that private lands are already under irrigation through facilities developed at private expense; it is usually true that the reclamation project only supplements or regulates existing water supplies.[16]

Indeed, it appears that several projects undertaken before the Boulder Canyon Project involved lands that were already under private irrigation, a situation that has frequently recurred in subsequent projects:

> The reclamation program is not primarily one of bringing arid lands under irrigation for the first time. Congress was advised as early as 1924 that one of the first projects approved under the 1902 Act, if not the first, was the Salt River project in Arizona, in which nearly all of the land was privately owned and under irrigation through a system of private canals. The function of the federally financed reclamation reservoir was to furnish water storage needed to conserve and regulate the existing water supply. Six other similar projects were also called to Congress' attention. At this early date, Congress was warned, "It seems certain that the aid of the Government will be sought in the future to rescue meritorious but distressed private projects * * *." The forecast was accurate. The number of instances in which the federal project supplemented existing

[16] See also 535 F.2d at 1095 n.3, 1103, 1112-1113 & n.72, 1114 n.77, 1116, 1117, 1121 n.107.

> irrigation steadily increased. In 1961 it was estimated that 60 percent of the total reclamation acreage fell in this category.

Tulare Lake, supra, 535 F.2d at 1112 (footnote omitted). The same point is stressed in a leading treatise, 2 R. Clark, *Waters and Water Rights* § 120.2, at 215 (1967) (footnote omitted):

> Another [asserted] ground for departing [in a particular project] from the statutory acreage limitation is that the project is merely providing supplemental water to an already developed area. This fact in itself is hardly a justification, because reclamation today generally supplies only supplemental water.[17]

[17] In *Ivanhoe,* the Court "hasten[ed] to correct any impression that lands in the Central Valley had not been reclaimed and irrigated at the inception of the project" (357 U.S. at 283), although it noted that "irrigators in [the Ivanhoe District, one of several involved in the case] receive water diverted from the San Joaquin in which they never had nor were able to obtain any water right" (357 U.S. at 285). See also *California* v. *United States,* 438 U.S. 645, 649 & n.3, 655 (1978):

> During the subsequent half century [following 1897], irrigation expanded throughout the arid States of the West, supported usually by private enterprise or the local community. * * * [3]

[3] * * * Private development has continued to be a major contributor to the reclamation of the West. From 1902 to 1950, federal reclamation projects increased the amount of irrigated land by 5,700,000 acres. This still only accounted, however, for approximately one-fifth of the irrigated acreage in the 17 Western States covered by the Reclamation Act of 1902. During the same period from 1902 to 1950,

Thus, the fact of precedent private development does not warrant an exemption to the excess-acreage limitation for the Imperial Irrigation District.[18]

> private reclamation opened up over 10,000,000 acres for irrigation. * * *
>
> * * * * *
>
> As noted earlier, reclamation of the arid lands began almost immediately upon the arrival of pioneers to the Western States. Huge sums of private money were invested in systems to transport water vast distances for mining, agriculture, and ordinary consumption.

[18] We also note that the District has greatly benefited from the Boulder Canyon Project Act in ways unrelated to the number of acres under irrigation. In *Arizona* v. *California*, *supra*, 373 U.S. at 553, 579, the Court summarized the difficulties confronting the District before the Project:

> But none of the more or less primitive diversions made from the mainstream to the Colorado conserved enough water to meet the growing needs of the basin. The natural flow of the Colorado was too erratic, the river at many places in canyons too deep, and the engineering and economic hurdles too great for small farmers, larger groups, or even States to build storage dams, construct canals, and install the expensive works necessary for a dependable year-round water supply. Nor were droughts the basin's only problem; spring floods due to melting snows and seasonal storms were a recurring menace, especially disastrous in California's Imperial Valley where, even after the Mexican canal provided a more dependable water supply, the threat of flood remained at least as serious as before. Another troublesome problem was the erosion of land and the deposit of silt which fouled waters, choked irrigation works, and damaged good farmland and crops.
>
> * * * * *
>
> The whole point of the [Boulder Canyon Project] Act was to replace the erratic, undependable, often destructive

Moreover, petitioners' argument rests on a misconception of Section 6 of the Project Act. Section 5 of

---

> natural flow of the Colorado with the regular, dependable release of waters conserved and stored by the project.

See also *id.* at 554, 588. Thus, "the residents of the Imperial Valley * * * [received] the benefits of flood control, storage water, [and] the certainty of getting an equated flow * * *." 70 Cong. Rec. 576 (1928) (remarks of Senator King), quoted at A. 251a. In addition, the District is required to reimburse the government only for the construction costs of the "main canal and appurtenant structures" necessary to transport the water to the Valley, and has contributed nothing to the capital costs of the dam itself, the storage facilities, or the hydroelectric plant. Sections 1 and 4(b) of the Boulder Canyon Project Act (Pet. App. 155a, 158a-159a). As Senator King noted (70 Cong. Rec. 576 (1928)), "the residents of Imperial Valley * * * will be required to pay for nothing except the cost of the all-American canal." See also 70 Cong. Rec. 529 (1928) (remarks of Sen. Phipps); *id.* at 576 (remarks of Sen. Pittman). See generally *Ivanhoe*, *supra*, 357 U.S. at 299 ("irrigation interests are bearing but a small fraction of the cost of the water supply facilities"); *Tulare Lake*, *supra*, 535 F.2d at 1120 (footnote omitted):

> Users of project water for irrigation are not charged with project costs attributable to navigation, flood control, salinity prevention, production of hydroelectric power, storage of water for industrial and municipal uses, and other uses not directly related to irrigation. They may, however, receive substantial benefits from such nonreimbursable expenditures.

Finally, repayment of those construction costs charged to the District—approximately $25,000,000, compared to $175,000,000 for the dam and the power plant—did not commerce until 1955, is extended over 40 annual installments, and is made without interest (Pet. App. 85a; see also 36 Op. Att'y Gen. 121 (1929); 69 Cong. Rec. 7623 (1928) (remarks of Sen. Johnson and Sen. King); 70 Cong. Rec. 519 (1928) (remarks of Sen. King); *id.* at 521 (remarks of Sen. King and Sen. Phipps)). It is thus clear that "the repayment required is * * * only a small fraction of cost" (2 R. Clark, *Waters and Water*

the Act confers broad authority upon the Secretary of the Interior, "through his § 5 contracts, both to carry out the allocation of the waters of the main Colorado River among the Lower Basin States and to decide which users within each State would get water." *Arizona* v. *California*, *supra*, 373 U.S. at 580. In our view, Section 6 was intended to "fetter the Secretary's discretion" (373 U.S. at 581) in determining those allocations. See also 373 U.S. at 582 & n.83. "[T]he Secretary, in making apportionments or contracts, * * * [must observe] the standards Congress has set for him to follow, including his obligation to respect 'present perfected rights' as of the date the Act was passed" (373 U.S. at 594).

This limitation in Section 6 on the discretion of the Secretary, however, does not unconditionally establish the antecedent eligibility to receive project water in the first instance or the terms and conditions upon which such water can be provided. Rather, it serves to set an " 'order of priority' " (373 U.S. at 583 n.84) for the delivery of water to which recipients are otherwise entitled. In this way, Section 6 precludes

---

Rights § 118.3, at 187 (1967)); indeed, in the specific case of the Imperial Irrigation District, it has been estimated that landowners pay $5 per acre-foot of project water rather than the actual cost for that water of more than $25 per acre-foot (125 Cong. Rec. S12571 (daily ed. Sept. 14, 1979) (remarks of Sen. Nelson)). Hence, regardless of pre-Project development of the Valley, the Boulder Canyon Project Act inures to the substantial benefit of landowners in the District. In these circumstances, it is fully justified to impose on those landowners "the excess-acreage provision * * * as a ceiling * * * on the federal subsidy that is being bestowed." *Ivanhoe*, *supra*, 357 U.S. at 297.

the Secretary from adopting, among the range of conceivable approaches, an allocation system that would impair the "satisfaction of present perfected rights" of landowners who are eligible to receive a designated quantity of federal water; it does not override the underlying conditions of eligibility, which are prescribed by Congress. For this reason, Section 6 is simply immaterial to Congress' determination, in Section 46 of the Omnibus Adjustment Act and Section 14 of the Project Act, that excess lands shall not receive federal water.

In any event, even if Section 6 were pertinent here, application of the excess-acreage limitation would not conflict with Section 6 and the "satisfaction of present perfected rights." While present perfected rights must have been acquired in accordance with state law, the effect of such rights, like other issues under the reclamation acts, ultimately is a "matter[] of federal law." *Ivanhoe*, *supra*, 357 U.S. at 289. As the court of appeals held in this case, the present perfected rights at issue here reside in the Imperial Irrigation District rather than in the individual landowners (Pet. App. 33a-34a):

> It follows that all the present perfected rights owned by the Imperial Irrigation district as of June 25, 1929, are not water rights owned by any particular landowner. Satisfaction of the Imperial Irrigation District's present perfected rights by the Secretary of the Interior in the allocation of Colorado River water therefore only concerns the total quantity of water to be sup-

plied to the Imperial Irrigation District and does not concern supplying any particular amount of water due to any particular landowner. The excess land provisions of Section 46, however, apply only to individual landowners and do not, under the Project Act, apply to the Imperial Irrigation District as the owner of water rights in trust for the common benefit. Excess lands of a particular landowner could be deprived of water without reducing the total amount of water delivered to the Imperial Irrigation District.

This conclusion is confirmed by the Court's recent supplemental decree in *Arizona* v. *California*, *supra*, which provided, with respect "to the present perfected rights to the use of mainstream water in each State" (439 U.S. at 420), that such rights accrued to "[t]he Imperial Irrigation District" (439 U.S. at 429).[19] Moreover, the court of appeals' analysis is consonant with the overall purposes of the Project Act, for it ensures that the excess lands, when conveyed in accordance with the reclamation law, will continue to receive water under Section 8 of the 1902 Reclamation Act (Pet. App. 173a) and Section 13(d) of the Project Act (43 U.S.C. 617*l*(d)); that purpose does not suggest, however, that current landowners should be relieved of the limitation on the size of a single holding that can receive federal water.

---

[19] This supplemental decree resulted (439 U.S. at 420) from the Court's earlier direction that "the State[] of * * * California * * * shall furnish * * * a list of the present perfected rights, with their claimed priority dates, in the waters of the mainstream in * * * [California]" (376 U.S. at 351).

Accordingly, nothing in Section 6 of the Boulder Canyon Project Act militates against the conclusion that Section 46 of the Omnibus Adjustment Act, as incorporated in Section 14 of the Project Act, is applicable to private lands in the Imperial Irrigation District.

b. Petitioners next urge (79-421 Br. 34-36) that the Imperial Irrigation District is exempted from the excess-acreage limitation of general reclamation law by virtue of Section 1 of the Boulder Canyon Project Act, ch. 42, 45 Stat. 1057, 43 U.S.C. 617 (Pet. App. 155a-156a), which provides that "no charge shall be made for water or for the use, storage, or delivery of water for irrigation or water for potable purposes in the Imperial or Coachella Valleys." In their view, "[b]ecause contemporary thinking equated acreage limitation with the sale of a water right, the fact that Congress explicitly prohibited any charge for delivery of water to Imperial Valley was reflective of a belief that Imperial Valley, because of its vested pre-project water rights, was not an appropriate case in which to impose an acreage limitation" (79-421 Br. 34-35; footnote omitted).[20]

---

[20] This argument, and the succeeding arguments discussed below (pages 41-46, *infra*), would have the effect of excluding the adjacent Coachella Valley as well as the Imperial Valley from the operation of the excess-acreage limitation; both are expressly included in the Boulder Canyon Project Act (Section 1, ch. 42, 45 Stat. 1057, 43 U.S.C. 617, Pet. App. 155a), and the statute affords no basis for distinguishing between them. Such a result, however, would be wholly unsupportable. In 1945, on the first occasion that the Department considered

In large measure, petitioners' argument in this regard is a reiteration of their previous contention that the excess-acreage limitation is incompatible with "the satisfaction of present perfected rights" under Section 6 of the Project Act. For the reasons set out above (pages 30-38, *supra*), petitioners' alternative formulation of that argument under Section 1 of the Act should also be rejected.[21]

Moreover, this provision in Section 1 of the Project Act was enacted to address different considerations than the applicability of the excess-acreage limitation. As explained in the Senate report (S. Rep. No. 592, 70th Cong., 1st Sess. 4 (1928)):

> The latter part of the amendment to the effect that no charge shall be made for irrigation water through the all-American canal is to avoid duplication of charge on the lands. These lands already have a water right, and since they are to reimburse the Government under the reclamation law the act should be perfectly clear that the lands are not to pay additional charges for water service.

The same explanation for this provision was offered by Senator King (70 Cong. Rec. 528 (1928)):

> I [have] reached the conclusion that perhaps it might not be just, in view of the fact that the Imperial Valley people would have to construct the canal, to impose upon them burdens for storage purposes and levy a charge upon them annually for water received from the reservoir. I reached that conclusion in part for the reason that the lands in the Imperial Valley which have been irrigated have, perhaps, a vested right, and it might be questionable whether we would have the power to impose a charge upon them for the use of water. At any rate, I gave them the benefit of all doubt, and I have offered this amendment, the effect of which, if adopted, will be that the Imperial Valley and the Coachella Valley will not be required to make payment for storage waters.

See also 69 Cong. Rec. 7626 (1928) (remarks of Sen. King and Sen. Phipps); 70 Cong. Rec. 529 (1928) (remarks of Sen. Hayden).

Thus, Section 1 was designed to avoid the possible unfairness of imposing a charge for water upon landowners who had a pre-existing right of use. There is no indication here of a congressional intent to exempt the Imperial Irrigation District from the excess-acreage limitation of reclamation law.

c. Petitioners further argue (79-421 Br. 36-37, 41-42; 79-425 Br. 12-13) that the inclusion of Section 9

---

the question, the Interior Solicitor concluded that the excess-acreage limitation did apply to the Coachella Valley (A. 230a-253a); the contract between the Secretary and the Coachella Valley was, with the Valley's consent, amended accordingly, and the limitation has thereafter been consistently observed (A. 264a-265a). No one has ever suggested that the Coachella Valley is exempt from the excess-acreage provision, and any such suggestion would be baseless.

[21] We also suggest that petitioners' constricted reading of the word "sale" in Section 5 of the 1902 Reclamation Act, to be confined essentially to a commercial transaction for monetary consideration, is incorrect. See Solicitor's Op. M-36675, 71 Interior Dec. 498, 501-502 (1964) (A. 185a-186a).

in the Boulder Canyon Project Act (60 Stat. 36, 43 U.S.C. 617h, Pet. App. 165a-166a), shows that Congress meant to exempt private lands in the Imperial Irrigation District from the general excess-acreage limitation of federal reclamation law. According to petitioners, the fact that the Project Act in Section 9 explicitly imposed an excess-acreage limitation on public lands, but did not likewise impose a corresponding limitation on private lands, discloses such an intent. Petitioners similarly argue that Section 9 establishes the same excess-acreage standards for public lands as were already provided in Section 3 of the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, 43 U.S.C. 416, 432, 434 (Pet. App. 172a) and that Section 9 would therefore be superfluous if Congress believed it was incorporating the general reclamation law in Section 14 of the Project Act.

Petitioners' argument, however, founders on its faulty premise: there is no excess-acreage limitation applicable to public lands.[22] Neither Section 3 of the 1902 Reclamation Act nor Section 9 of the Project Act deals with excess-acreage limitations at all; rather, they govern public entry upon lands of the United States that are susceptible of irrigation and reclamation. As the court of appeals correctly concluded (Pet. App. 38a), "[t]he reference to a 160-

[22] Section 46 of the Omnibus Adjustment Act applies only to "irrigable lands held in private ownership" (Pet. App. 174a).

acre limit on tracts of public land [in Section 9, and, by the same token, in Section 3] merely limits the Secretary of the Interior's discretion in determining tract sizes."

Since Section 9 of the Project Act and Section 3 of the 1902 Act do not pertain to the excess-acreage limitation, it is of little moment for present purposes whether they substantially overlap. But, in any event, it is clear that the statutes do differ in substance. Principal among these differences is the extent to which public lands are withdrawn from entry. Section 3 *authorizes* the Secretary "to withdraw from entry, *except under the homestead laws*, any public lands believed to be susceptible of irrigation" by means of the given project (Pet. App. 172a; emphasis added); hence, under Section 3, public lands remain subject to entry pursuant to the homestead laws (and perhaps pursuant to other laws as well, in the discretion of the Secretary). Section 9, on the other hand, *requires* that "[a]ll lands of the United States found by the Secretary of the Interior to be practicable of irrigation and reclamation by the * * * [Boulder Canyon Project] *shall* be withdrawn from public entry [subject to subsequent reopening at the direction of the Secretary]" (Pet. App. 165a; emphasis added); thus, Section 9 mandates that lands be withdrawn altogether from public entry. As Senator Johnson explained the purpose underlying Section 9 of the Project Act (69 Cong. Rec. 7252 (1928); emphasis added):

Section 9 withdraws, very properly, the public lands susceptible of irrigation and reclamation under the works here provided for from entry. That is done for the very purpose of preventing what one newspaper at least, through its hired writers, has been accusing us of. It is done for the purpose of preventing *any* speculative scheme in real estate, so that there can be *no* individual, *no* syndicate, or others who will be able to gobble up land in the vicinity of this territory, land which is held by the United States—to gobble it up at a small fraction of its real worth, and then coin it by virtue of these works. *All the land belonging to the United States is withdrawn under this provision from entry,* and that is the answer to certain articles which have recently appeared in relation to the measure and the design of the bill.

Accordingly, the inclusion of Section 9 in the Boulder Canyon Project Act does not in any way suggest that Congress intended to eliminate the general excess-acreage limitation for the Imperial Irrigation District.

d. As their final statutory argument, petitioners contend (79-421 Br. 37-39) that Section 46 of the Omnibus Adjustment Act is in conflict with Section 4(b) of the Boulder Canyon Project Act, ch. 42, 45 Stat. 1059, 43 U.S.C. 617c(b) (Pet. App. 158a-159a) and therefore is excluded from Section 14 of the Project Act. Petitioners cite to three variances between Sections 46 and 4(b): *first,* that Section 46 calls for "a contract or contracts" governing repay-

ment of costs, while Section 4(b) speaks of "provision for revenues, by contract or otherwise"; *second,* that Section 46 specifies that the agreement for repayment be made "with an irrigation district or irrigation districts," while Section 4(b) is silent on the entity to enter into the repayment agreement on behalf of the landowners; and, *third,* that Section 46 provides that the contract for repayment be executed before "[any] water shall be delivered," while Section 4(b) states that an agreement must be reached "[b]efore any money is appropriated for * * * construction * * * or any construction work done or contracted for * * *."

None of these variances casts doubt on the applicability of the excess-acreage limitation to lands in the Imperial Irrigation District. Indeed, the first two points do not present conflicts between the statutes at all, for the requirements of Section 46 are completely consistent with the somewhat broader provisions of Section 4(b). In any event, these provisions of Section 4(b), to the extent they depart from Section 46, do not require that the Imperial Irrigation District be exempt from the separate requirement of the excess-acreage limitation. It is entirely feasible to comply both with the particular provisions of Section 4(b) regarding the nature, timing and party to the repayment agreement, and with the excess-acreage provision of Section 46. Thus, nothing in Section 4(b) suggests that the fundamental national policy em-

bodied in Section 46 be forsaken in the case of the Imperial Valley.[23]

B. The Legislative History Of The Boulder Canyon Project Act Does Not Demonstrate A Congressional Intent That The Excess-Acreage Limitation Be Inapplicable To Private Lands In The Imperial Irrigation District

Petitioners argue at some length (79-421 Br. 42-53; 79-435 Br. 38-46) that the legislative history of the Boulder Canyon Project Act reveals a congres-

[23] With particular reference to the requisite time to execute the reimbursement agreement, the legislative history of Section 4(b) fully explains the provisions of the Project Act. The Boulder Canyon Project was, as Senator Johnson stated, "the greatest constructive work now pending in the country, the greatest constructive work of our generation" (69 Cong. Rec. 7245 (1928)). In order that the burden of this $125,000,000 project (*id.* at 7248) not fall on the public treasury, the Act was designed to ensure that "[b]efore there can be a shovelful of earth turned or a single dollar expended the United States Government must have in its hands wholly executed contracts which will repay every penny contemplated to be expended under the bill" (*id.* at 7245). To this end, Section 4(b), "the most rigorous provision that ever was inserted in a measure of this character" (*id.* at 7250), was included in the legislation. See also 70 Cong. Rec. 520 (1928) (remarks of Sen. Jonhson); *id.* at 833 (remarks of Rep. Swing). Compare *Tulare Lake, supra*, 535 F.2d at 1133-1134 n.168, quoting S. Rep. No. 831, 69th Cong., 1st Sess. 3 (1926): "[The timing provisions of Section 46 have been amended because it] is thought that contracts could not be successfully negotiated until after some action involving an appropriation has been taken by the Federal Government * * *." In light of the extensive background of the Boulder Canyon Project Act, Congress apparently believed that the specified repayment agreements could be negotiated without this action on the part of the government that might be necessary in other situations.

sional intention to exempt lands in the Imperial Irrigation District from the excess-acreage limitation of federal reclamation law. As the court of appeals noted, however, "[i]n reviewing this history, it is important to remember that [petitioners] seek to find in it a specific exemption that cannot be found in the actual language of the Project Act" (Pet. App. 39a-40a). And, as the Court observed in *Ivanhoe, supra*, "where a particular project has been exempted [from the excess-acreage limitation] because of its peculiar circumstances, the Congress has always made such exemption by express enactment" (357 U.S. at 292). Petitioners' burden is thus a heavy one, for at a minimum they must show that the clear import of the statutory language to apply the excess-acreage limitation in the District is defeated by an explicit and unambiguous indication to the contrary in the history of the Act.

Petitioners fall far short of this showing. Given that Section 46, a provision of central importance to the reclamation law, had been passed less than two years before the Boulder Canyon Project Act, the exclusion of the Imperial Irrigation District from the excess-acreage limitation would most likely have been the subject of extensive deliberation and thorough analysis in Congress. However, petitioners have pointed to only a handful of occasions during the protracted six-year history of the Project Act on which the issue arose at all, and none of these involved the careful evaluation and vigorous debate

that could be expected to attend such a measure.[24] As the court of appeals concluded, "[t]he legislative history indicates that the problem did not receive the extended Congressional consideration that would be normally thought appropriate if an exemption to an important part of the reclamation law was being created" (Pet. App. 46a). This circumstance, by itself, makes it highly improbable that Congress intended the excess-acreage limitation not to apply to the Imperial Valley.

At all events, a detailed examination of the legislative history of the Boulder Canyon Project Act fails to demonstrate a congressional intent to exempt lands in the Imperial Irrigation District from the general excess-acreage limitation. The background and legislative efforts leading to the Project Act are set out in *Arizona* v. *California*, *supra*, 373 U.S. at 559-561, and need not be fully recounted here. In brief, the Act as passed was the fourth of the so-called Swing-Johnson bills introduced by Congressman Swing and Senator Johnson of California between 1922 and 1928. The third Swing-Johnson bill, submitted in 1926, contained the provision now found in Section 14 that the "Act shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise

[24] The principal controversies surrounding the Project Act were the allocation of water among the affected states (especially Arizona and California) and the construction of a hydroelectric plant.

herein provided." Senator Johnson explained that "[u]nder this [provision of the] bill * * * the entire project [is made] a part of the reclamation law * * * [T]his is a reclamation measure, made so by * * * [this provision] of the bill." 68 Cong. Rec. 4291 (1927). The Secretary of the Interior similarly interpreted this section of the bill to mean that "[i]n the sale of water to irrigation districts * * * the provisions of the reclamation act and of the Warren Act would apply." See H.R. Rep. No. 1657, 69th Cong., 2d Sess. 22 (1926).

In the House, the Committee on Irrigation and Reclamation added an express excess-acreage limitation to Section 1 of the third Swing-Johnson bill. See H.R. Rep. No. 1657, *supra*, at 29-30. This bill was reported by the Committee but never came to a vote on the floor. At the same time, the corresponding bill in the Senate (S. 3331) did not contain a comparable excess-acreage provision. As in the House, the third Swing-Johnson bill did not come up for a vote in the Senate.

In 1927, the fourth Swing-Johnson bill was introduced in Congress. As in the previous session, the House version contained the express excess-acreage limitation, but the Senate version did not. In this form the bill was passed by the House. 69 Cong. Rec. 9989-9990 (1928). The bill adopted by the House subsequently came to the floor of the Senate, where, on Senator Johnson's motion, it was unanimously amended by substituting the Senate version (S. 728). Senator Johnson explained that this substitution was

made "in order that the orderly legislative procedure may be preserved" and that the two bills had "like purposes and * * * like designs." 70 Cong. Rec. 67 (1928).[25] The Senate ultimately passed its version of the bill, without the explicit excess-acreage provision. 70 Cong. Rec. 603 (1928). Thereafter, the Senate version was considered in the House. Congressman Swing, in urging passage of the Senate bill, stated that "[t]he only differences [between the Senate and House bills], it seems to me, are matters relatively of small importance compared with the beginning of this great project." 70 Cong. Rec. 833 (1928). The House then accepted the Senate bill without any discussion of the omission of the express excess-acreage limitation that was contained in the bill it had previously adopted. The bill was signed into law by President Coolidge on December 21, 1928 (45 Stat. 1057).

In our view, this legislative history suggests that Section 14 of the Project Act, which was found in all of the above bills, was designed to incorporate the excess-acreage limitation of federal reclamation law. The House and Senate versions of the fourth Swing-Johnson bill plainly differed with respect to an express provision for application of the excess-acreage limitation. Yet, the Secretary of the Interior stated that the two bills were similar and failed to note any

[25] In a letter to the Senate Committee on Irrigation and Reclamation, the Secretary of the Interior had also stated that the Senate bill was similar to the House version. S. Rep. No. 592, 70th Cong., 1st Sess. 30, 31 (1928).

discrepancies with respect to the excess-acreage limitation; Senator Johnson observed that the House and Senate bills were of "like purposes" and "like designs," and the Senate unanimously agreed to Senator Johnson's proposal to substitute the Senate version for the House bill in the interest of "orderly legislative procedure"; and the House, after being advised by Congressman Swing that the differences between the bills were "matters relatively of small importance," accepted without objection the bill passed by the Senate that omitted the express provision regarding the excess-acreage limitation that the House had previously adopted. We submit that these principal features of the legislative history can be understood only if Congress recognized that the excess-acreage limitation was included in Section 14 of the Project Act. At the least, the legislative history does not contradict the conclusion, derived from the language of the statute and the fundamental purposes of the reclamation law, that the excess-acreage limitation is applicable to private lands in the Imperial Irrigation District that receive federal water under the Boulder Canyon Project Act.[26]

Petitioners rely on some half-dozen instances in which a Senate opponent of the Project Act either criticized the proposed bill for not expressly referring

[26] As the Court observed in *Gemsco, Inc.* v. *Walling*, 324 U.S. 244, 260 (1945), "[t]he plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction."

to the excess-acreage limitation or attempted unsuccessfully to amend the bill to include an explicit provision to apply that limitation. However, these criticisms, several of which were made in the course of lengthy filibusters, elicited no response or discussion on the issue and, as statements of those opposing the measure, offer little if any guidance on the meaning of the Act. See, *e.g.*, *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 203-204 n.24 (1976), and cases cited therein. Likewise, none of the amendments proposed by these opponents was reported out of Committee or debated or voted upon in the Senate. And, as the court of appeals noted, all of these proposals were subject to serious objection on grounds wholly unrelated to the excess-acreage limitation (Pet. App. 43a, 46a n.59).[27] Congress' failure to act favorably on their proposed legislation, especially in view of the incorporation of the general reclamation law in Section 14 and the substantial objections to the rejected provisions for reasons other than any excess-acreage

[27] For example, petitioners rely (79-421 Br. 49; 79-435 Br. 44) on a bill, proposed in Committee by Senator Phipps, that included an express excess-acreage provision. However, the Secretary of the Interior objected to the Phipps bill on the ground that it did "not authorize the construction of a power plant and incidental structures suitable for the fullest economic development of electrical energy. The revenue to be derived from the sale of power is necessary to render the project feasible" (S. Rep. No. 592, *supra*, at 31). In fact, rather than basing his objection on the excess-acreage issue, the Secretary did not even advert to any difference between Senator Phipps' bill and Senator Johnson's bill on the question of the excess-acreage limitation.

issue, is surely "a poor beacon to follow in discerning the proper statutory route." *Zuber* v. *Allen*, 396 U.S. 168, 185 (1969). See also, *e.g.*, *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 381-382 n.11 (1969). In the circumstances of the case, "several equally tenable inferences could be drawn from the failure of the Congress to adopt an amendment in the light of the interpretation placed upon the existing * * * [bill] by some of its members, including the inference that the existing * * * [bill] already incorporated the offered change." *United States* v. *Wise*, 370 U.S. 405, 411 (1962).[28]

Thus, the legislative history cited by petitioners offers no basis to find that Congress intended the excess-acreage limitation to be inapplicable to private lands in the Imperial Irrigation District.

[28] As Solicitor General Rankin stated in the Memorandum In Behalf Of The United States With Respect To Relevance Of Non-Compliance With Acreage Limitations Of Reclamation Law at 2-3 n.5, *Arizona* v. *California*, No. 10, Original (O.T. 1957) (A. 261a-262a n.5):

> It is at best no more logical to argue, as the California defendants have, that the omission to include in the Project Act an express limitation with respect to lands in private ownership indicates a Congressional intent that no such limitation should apply than it is to argue that the express provision was deleted because it was thought section 14 was entirely adequate to accomplish the purpose.

C. The Administrative Practice Of The Department Of The Interior Does Not Render The Excess-Acreage Limitation Inapplicable To Private Lands In The Imperial Irrigation District

In support of their construction of the Boulder Canyon Project Act, petitioners emphasize (79-421 Br. 14-17; 79-425 Br. 7-16; 79-435 Br. 46-60, 66-68) that between 1933 and 1964 the Department of the Interior did not seek to apply the excess-acreage limitation to lands in the Imperial Irrigation District. However, an agency's construction of a statute is "only one input in the interpretational equation." *Zuber* v. *Allen*, *supra*, 396 U.S. at 192. The deference due the administrative interpretation of a statute "is constrained by * * * [the Court's] obligation to honor the clear meaning of a statute, as revealed by its language, purpose and history." *Southeastern Community College* v. *Davis*, No. 78-711 (June 11, 1979), slip op. 12, quoting *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551, 566 n.20 (1979). See also, *e.g.*, *SEC* v. *Sloan*, 436 U.S. 103, 117 (1978) ("[consistent and longstanding administrative interpretation cannot] overcome the clear contrary indications of the statute itself"); *Morton* v. *Ruiz*, 415 U.S. 199, 237 (1974) ("In order for an agency interpretation to be granted deference, it must be consistent with the congressional purpose"). For the reasons discussed above, the language and purpose of the statutes, uncontradicted by the legislative history of the Project Act, establish that the excess-acreage limitation is applicable to the Imperial Irrigation District and that the Department's position to the contrary

prior to 1964 was erroneous and unauthorized.[29]

---

[29] Petitioners suggest (79-421 Br. 18-20, 24-27; 79-425 Br. 15-16; 79-435 Br. 57-60) that private landowners have relied to their detriment on the Department's prior position and therefore that the Secretary is now precluded from applying the excess-acreage limitation to the Imperial Valley. By the same token, however, these landowners for 40 years have benefited from the use of federal water that, as the court of appeals held, the Project Act prohibits. Moreover, it is well settled that administrative practices cannot "thwart the plain purpose of a valid law" (*United States* v. *San Francisco*, 310 U.S. 16, 32 (1940)) and that "[t]he doctrine of equitable estoppel is not a bar to the correction * * * of a mistake of law" (*Automobile Club* v. *Commissioner*, 353 U.S. 180, 183 (1957)). Notwithstanding any agreements or understandings that might have existed, "the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409 (1917). These principles apply with particular force in cases involving public property, which the government "holds * * * in trust for all the people." *United States* v. *California*, 332 U.S. 19, 40 (1947). See generally Brief for the United States at 44-50, *Andrus* v. *Shell Oil Co.*, No. 78-1815 (argued Jan. 15, 1980), copies of which are being sent to counsel for petitioners here. And, as will be discussed below (pages 57-64, *infra*), the Department's position after 1933 rested largely on a failure to act for reasons unrelated to the merits of the issue, rather than on either an independent re-examination of, or continued adherence to, the substantive conclusion previously reached. Especially in these circumstances, the Secretary is not foreclosed from abandoning the Department's prior construction to conform to the requirements of the statute. See, *e.g.*, *United States* v. *E.I. duPont deNemours & Co.*, 353 U.S. 586, 590 (1957); *Baltimore & O. R.R.* v. *Jackson*, 353 U.S. 325, 330-331 (1957).

We also note that Congress is currently considering legislation that would exempt the Imperial Valley from the excess-acreage limitation and would require any person who sub-

In any event, as the Court has recently observed:

> We consider that the rulings, interpretations and opinions of * * * [administrative agencies], while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

General Electric Co. v. *Gilbert*, 429 U.S. 125, 141-142 (1976), quoting *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944). See also, *e.g.*, *SEC* v. *Sloan*, *supra*, 436 U.S. at 118; *Morton* v. *Ruiz*, *supra*, 415 U.S. at 237. Despite petitioners' contention that the Department prior to 1964 consistently adhered to the view that the excess-acreage limitation did not apply to the Imperial Valley, the agency's position in this regard is, upon examination, wholly inadequate to warrant deference by the Court.

sequently acquires more than 160 acres of land in the Valley to pay interest on the portion of the District's outstanding indebtedness to the United States that is allocable to such land. The pending bill (S. 14, 96th Cong., 1st Sess., § 8 (1979)) has been passed by the Senate (125 Cong. Rec. S12465, S12574, S12576, S12594-S12596 (daily ed. Sept. 13 and 14, 1979)) and has been considered by the House in *Hearings on S.14 and Other Bills Concerning Acreage Limitations and the Reclamation Act of 1902 Before the Subcomm. on Water and Power Resources of the House Comm. on Interior and Insular Affairs*, 96th Cong., 2d Sess. (1979). In our view, Congress is the branch of government best suited to settle the excess-acreage question in a manner that fairly takes account of the wide range of competing interests, both public and private, at issue in this case. Indeed, one such accommodation is reflected in S. 14 itself, which, in imposing interest on newly acquired lands in excess of 160 acres, is similar to measures Congress has previously enacted in the reclamation area. See Small Reclamation Projects Act of 1956, 43 U.S.C. 422e.

Following passage of the Boulder Canyon Project Act in 1928, the Department and the Imperial Irrigation District undertook to negotiate the contract required by Sections 4(b) and 5 of the Act. Among the questions that arose during these negotiations was the applicability of the excess-acreage limitation to the Imperial Valley. In a 1930 memorandum—the only contemporaneous record that has been found in the Department's files (A. 196a n.25)—Mr. Northcutt Ely, then Executive Assistant to the Secretary of the Interior, stated that he saw "nothing to do but enforce it [the reclamation law's limitation of 160 acres to a particular owner] unless the Imperial Irrigation District can get new legislation" (A. 223a). Notwithstanding this conclusion, the contract as finally executed was silent on the excess-acreage issue.

The contract between the Department and the District was thereafter submitted to a California state court for confirmation, as required by law.[30] In connection with that confirmation proceeding, the District solicited from the Department a ruling on the applicability of the excess-acreage limitation, "pro-

[30] This confirmation proceeding will be further discussed below (see pages 68-72, *infra*).

vided, that such ruling would be that the 160-acre limitation did not apply. He [the attorney for the District] doesn't want any formal ruling, of course, if the Solicitor were to hold that the limitation applies so far as Imperial Irrigation District is concerned" (A. 222a). In response to this request, Secretary Wilbur sent a letter to the District (A. 224a-226a) stating that it was not subject to Section 5 of the 1902 Reclamation Act, which provides in pertinent part that "[n]o right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one landowner" (Pet. App. 173a). Secretary Wilbur based this conclusion on the grounds, *first*, that under Section 1 of the Project Act no charge was to be made for the delivery or use of water and hence no water was "sold" within the meaning of Section 5; *second*, that the issue had been raised during negotiation of the contract and had been resolved in favor of the District; *third*, that the Imperial Valley was under private irrigation prior to the Project Act and had a "vested right" to the use of that water; and, *fourth*, that in similar cases involving such "vested rights" the Department had previously allowed water to flow through government projects to excess lands.[31]

[31] A subsequent letter to the District from Porter W. Dent, Assistant Commissioner and Chief Counsel of the Bureau of Reclamation, stated that "in [Mr. Dent's] view the same principle discussed in the Secretary's letter" with respect to Section 5 is also pertinent to Section 46 of the Omnibus Adjustment Act (A. 227a-228a). Mr. Dent further noted that he had been "of the opinion that some specific provision

The delivery of water from the Boulder Canyon Project to the Imperial Valley began in 1940 (Pet. App. 4a). In 1944, a question arose concerning the applicability of the excess-acreage limitation to the adjacent Coachella Valley, which, like the Imperial Valley, receives water under the Boulder Canyon Project Act. The following year, Fowler Harper, the Solicitor of the Department of the Interior, concluded in a formal opinion that the general excess-acreage limitation of Section 46 did apply to the Coachella Valley (A. 230a-253a). This opinion, which was approved by Secretary Ickes (A. 253a), rejected the approach previously taken by Secretary Wilbur and severly criticized the 1933 letter to the District (A. 252a):

> Furthermore, an examination of the files reveals that the letter of the former Secretary was written at the request of counsel of the Imperial District who wanted a ruling on the application of the excess land provisions "provided, that such ruling would be that the 160-acre limitation did not apply." Purposely, the letter of Secretary Wilbur never took the form of a formal decision. It was written solely for the purpose of giving partisan help to the Imperial Water District, as the delay of the final confirmation of the contract held up the construction of the All-American

should be inserted regarding this acreage limitation and the original draft of the contract so provided," that the District had caused that provision to be omitted because "it would only be confusing and make the ratification [of the contract] by the landowners more difficult," and that he had "with reluctance agreed to elimination of the specific provision regarding acreage limitation" (A. 227a-228a).

> Canal. Besides, the time of the Hoover Administration was near its close. In less than ten days after the date of Secretary Wilbur's letter (February 24, 1933), President Roosevelt was inaugurated.[32]

However, because the Wilbur letter was confined to the Imperial Valley and did not pertain to the Coachella Valley, it was not explicitly overturned.

In light of the Harper opinion, the Veterans of Foreign Wars requested in 1948 that Secretary Krug reconsider the Wilbur letter. Without addressing the merits of the issue, Secretary Krug declined to disturb the Department's position inasmuch as the landowners in the Imperial Valley "were entitled to rely upon the advice from the Secretary * * *. [Adherence to the Wilbur letter is] the position which the Department must take in this matter in fairness to those who have relied on its action, even though that action might now be subject to valid question" (A. 254a).[33]

In 1958, in connection with the *Arizona* v. *California* litigation in this Court, Solicitor General Rankin inquired of Interior Solicitor Bennett concerning the applicablity of the excess-acreage limitation to the Imperial Valley. Solicitor Bennett responded that he had "not had occasion to undertake a legal analysis

---

[32] As Secretary Udall subsequently noted, "the rationale of * * * [Solicitor Harper's opinion] challenges the validity of Secretary Wilbur's view" (A. 265a).

[33] Much the same view was expressed by Solicitor General Griswold in declining to authorize an appeal by the United States in this case in 1971. See 117 Cong. Rec. 46228 (1971).

of the respective views heretofore expressed by Secretary Wilbur and former Solicitor Harper," but that "[w]hatever the conclusion might be, to my mind the time has long since passed when it is realistic and practicable to do so" (A. 255a).[34] Following this exchange of correspondence, Solicitor General Rankin submitted to the Special Master a Memorandum in Behalf of the United States that stated that the Harper opinion had "repudiated the conclusion reached in the Wilbur letter of 1933" (A. 261a). The government's memorandum then continued (A. 261a n.5):

> Briefly, it may be stated that for the reasons stated in Solicitor Harper's opinion, as well as for others, no conclusion seems permissible other than that the limitations of the reclamation law upon the quantity of privately owned lands which might receive irrigation water under the All-American Canal are applicable in the Imperial Valley * * *.

Solicitor General Rankin had a further opportunity in 1958 to present the views of the government on the applicability of the excess-acreage limitation to the Imperial Valley. In the Brief for the United States as Amicus Curiae in *Ivanhoe Irrigation District* v. *McCracken*, *supra*, the Solicitor General explained (page 37 n.9; emphasis added):

---

[34] Solicitor Bennett also advised that the excess-acreage issue was not relevant to the question in *Arizona* v. *California* relating to the apportionment of water among the lower-basin states (A. 258a).

> Reclamation law contains many other references [in addition to Section 46 of the Omnibus Adjustment Act of May 25, 1926] to the acreage limitations, ranging in time from * * * [1911 to 1957], all of which evidence the consistency with which the Congress has adhered to acreage limitation as a basic policy in administration of the reclamation program. Although there are instances where particular projects have been exempted because of circumstances peculiar to those projects * * * such exemptions have always been accomplished by express enactment to that effect. *We disagree with the suggestion at page 48 of appellants' brief to the effect that acreage limitations are not applicable in the Imperial Irrigation District in California.*

In 1964, in response to a congressional inquiry (A. 263a-264a), Solicitor Barry of the Interior Department undertook a thorough review of the excess-acreage issue concerning the Imperial Valley. Based on this comprehensive effort, Solicitor Barry concluded in a formal opinion that the excess-acreage limitation was applicable to lands in the Imperial Irrigation District (A. 182a-210a). Solicitor Barry criticized the Wilbur letter on several grounds. He found that "the record is ambiguous as to whether the Department had actually determined the excess land laws not to be applicable to Imperial Irrigation District prior to the execution of the contract. There is no direct evidence of such a conclusion. To the contrary, the only record we have been able to find of consideration of the question prior to the execution of the contract indicates that the excess land limitations did

apply" (A. 196a n.25). He also found that Secretary Wilbur had misconstrued the pertinent statutes in determining that the excess-acreage limitation was inapplicable because the District had a vested water right and was not to be charged for water from the Boulder Canyon Project (A. 185a-186a, 198a-199a; see also A. 201a n.29). Solicitor Barry likewise found that Secretary Wilbur had erred in relying upon earlier Departmental decisions to allow water to be delivered through federal projects to land in excess of 160 acres; these had occurred only "in the special situation," unlike the Imperial Valley, "where existing physical facilities were being acquired by the Government for incorporation in a project" (A. 199a). In sum, after carefully considering the language and purpose of the relevant statutes, the legislative history of the Boulder Canyon Project Act, and the administrative practice with respect to the Imperial Valley, Solicitor Barry concluded that the excess-acreage limitation was applicable to the District and that "[t]he interpretation in the Wilbur letter of the meaning of the Project Act was clearly wrong and could not effect a change in the statutes enacted by Congress" (A. 210a). Solicitor Barry's opinion was accepted by Secretary Udall and concurred in by the Attorney General (A. 347a), and has been consistently adhered to since that time by four Secretaries in three Administrations.

Thus, throughout the period 1933-1964, the only basis for the Department's position on the excess-acreage issue was Secretary Wilbur's letter in 1933.

Until Solicitor Barry's re-examination of the question in 1964, the Department either criticized the Wilbur letter without expressly overruling it, as in Solicitor Harper's 1945 opinion, or abided by the Wilbur letter for reasons other than its substantive validity, as in Secretary Krug's 1948 letter and Solicitor Bennett's 1958 memorandum. Moreover, the circumstances and contents of the Wilbur letter have from the outset suggested substantial doubt about its reliability. Finally, the correctness of the Wilbur letter has been soundly discredited by Solicitors Harper and Barry, and the Solicitor General on two occasions has argued on behalf of the United States that the excess-acreage limitation does apply to the Imperial Valley. In these circumstances, the administrative practice is simply inadequate to sustain petitioners' contention that the 1933 Wilbur letter offers controlling guidance on the excess-acreage issue.[35]

---

[35] As the court of appeals summarized the legal effect of the Wilbur letter (Pet. App. 55a):

> In the case of the Wilbur letter, there is an informal opinion reached under circumstances indicating a lack of careful consideration. It does not purport to even consider the portion of the reclamation law in question in this case. The legal conclusions of the Wilbur letter have not been consistently held to be correct by the Department of the Interior. Most if not all of its reasoning was implicitly rejected in the Harper opinion of 1945 and it was explicitly rejected in the Barry opinion of 1964. The Wilbur letter does not construe ambiguous or doubtful language in the Project Act but in a rather simplistic analysis not contained in a formal opinion purports to find an inconsistency between two different statutes. It is

Petitioners also argue (79-435 Br. 51, 60-64; see also 79-421 Br. 15-16) that Congress has ratified the administrative practice not to apply the excess-acreage limitation to the Imperial Irrigation District. In support of their argument, petitioners point to congressional appropriations for the Boulder Canyon Project in the period 1936-1950 and to three amendments to the Act that Congress has adopted without expressing disapproval of the agency's position.[36]

> an interpretation made after enactment of both statutes and consequently never before Congress when the Project Act was being considered. In these circumstances, insofar as the application of the excess lands provision of Section 46 of the Omnibus Adjustment Act of 1926 is concerned, the Wilbur letter is not entitled to any deference as a proper construction of the Project Act and reclamation law.

[36] Petitioners also refer (79-421 Br. 14-16; 79-435 Br. 51-52, 61) to occasions on which, in the context of other reclamation projects, reference was made in congressional hearings to the Department's practice regarding the Imperial Valley. Particular emphasis is placed on the 1944 hearings concerning, in pertinent part, the Central Valley Project in California (79-421 Br. 14-15; 79-435 Br. 51-52), in which the Assistant Commissioner of Reclamation of the Department, relying solely on the 1933 Wilbur letter, stated to a Senate subcommittee that "[t]he [excess-acreage] limitation was never applied under the law to the Imperial Valley * * *" (A. 229a). See *Rivers and Harbors Omnibus Bill: Hearings on H.R. 3961 Before a Subcomm. of the Senate Comm. on Commerce*, 78th Cong., 2d Sess., Part V, 599, 764 (1944). This is hardly a considered assessment of the correctness of the Wilbur letter, and in any event was made to a subcommittee considering a bill that had nothing whatever to do with the applicability of the excess-acreage limitation to the Imperial Irrigation District. Moreover, because the subject of this testimony was a rider to

Given the uncertainties of the Department's practice in this area, only the clearest and most express statement by Congress could serve to exempt the Imperial Valley from the excess-acreage limitation. The instances cited by petitioners plainly do not constitute such a showing.

Indeed, the legislative record here fails to suggest in any way that Congress has considered and accepted the view that the excess-acreage limitation is inapplicable to the Imperial Irrigation District. None of the cited amendments to the Project Act involved the excess-acreage issue, and there is no indication that Congress directly considered, let alone resolved, the question. Especially in these circumstances, "[r]e-enactment * * * is an unreliable indicium at best." *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). See, *e.g.*, *SEC* v. *Sloan*, *supra*, 436 U.S. at 120-121 ("when the attention of the committee and of the Congress was focused on issues not directly related to the one presently before the Court * * * [re-enactment] is scarcely the sort of congressional approval [that constitutes legislative ratification]"); *Zuber* v. *Allen*, *supra*, 396 U.S. at 185-186

---

a river and harbors bill, the hearings were conducted by a subcommittee of the Senate Commerce Committee rather than of the Senate Interior Committee, which would usually have responsibility for reclamation bills. Finally, the particular provision at issue, which would have exempted the Central Valley Project from the excess-acreage limitation, was in fact deleted from the bill as finally enacted. See Act of March 2, 1945, ch. 19, 59 Stat. 10. See also Solicitor's Op. M-36919 (Dec. 6, 1979), at 42 n.151, —— Pub. Lands Dec. ——.

n.21 ("[w]here * * * there is no indication that a subsequent Congress has addressed itself to the particular problem, we are unpersuaded that silence is tantamount to acquiescence * * *").[37] Nor do the various appropriations for the Boulder Canyon Project, as part of the Department's annual budgets, amount to a congressional determination that the Imperial Valley is exempt from the general excess-acreage limitation. See, *e.g.*, *TVA* v. *Hill*, 437 U.S. 153, 189-193 (1978).

Thus, Congress' possible awareness of the administrative practice provides no basis to conclude that the excess-acreage limitation is inapplicable to lands in the Imperial Irrigation District.

---

[37] Moreover, "the doctrine of legislative acquiescence is at best only an auxiliary tool for use in interpreting ambiguous statutory provisions" (*Jones* v. *Liberty Glass Co.*, 332 U.S. 524, 533-534 (1947)), and this "interpretative aid[]" could not lead to a contrary conclusion "if it were clear that the [Department's] action contradicted the requirements of the [Project Act]" (*Massachusetts Trustees* v. *United States*, 377 U.S. 235, 242 (1964)). "[T]hat rule [of congressional re-enactment] is no more than an aid in statutory construction. While it is useful at times in resolving statutory ambiguities, it does not mean that the prior construction has become so embedded in the law that only Congress can effect a change." *Helvering* v. *Reynolds*, 313 U.S. 428, 432 (1941). As previously discussed, Secretary Wilbur's letter of 1933 to the effect that the excess-acreage limitation does not apply to the Imperial Valley is inconsistent with the language and purpose of the Project Act and general reclamation law.

II. THE 1933 DECISION OF THE CALIFORNIA SUPERIOR COURT IN *HEWES* v. *ALL PERSONS* DOES NOT, AS A MATTER OF *RES JUDICATA* OR COMITY, PRECLUDE CONSIDERATION ON THE MERITS OF THE APPLICABILITY OF THE EXCESS-ACREAGE LIMITATION TO PRIVATE LANDS IN THE IMPERIAL IRRIGATION DISTRICT

Petitioners contend (79-421 Br. 56-64; 77-435 Br. 69-72) that, as a matter of *res judicata* and comity, the 1933 decision of the California superior court in *Hewes* v. *All Persons*, No. 15460 (Imperial County 1933), precluded the court of appeals, and precludes this Court, from considering on the merits whether the excess-acreage limitation is applicable to private lands in the Imperial Irrigation District.[38]

In 1932, the contract required by Sections 4(b) and 5 of the Boulder Canyon Project Act (Pet. App. 158a-159a) was agreed upon by the Secretary and the Imperial Irrigation District. In accordance with state law, the contract was then ratified at a general election. Thereafter, the District commenced an

[38] This defense of *res judicata* was not asserted against the United States as plaintiff in the district court (Pet. App. 24a). The United States has consistently taken the position that it is not bound by a judgment in a confirmation proceeding in which it did not appear as a party. See Memorandum In Behalf Of The United States With Respect To Relevance Of Non-Compliance With Acreage Limitations Of Reclamation Law at 2-3 n.5, *Arizona* v. *California*, No. 10, Original (O.T. 1957) (A. 262a); Brief For The United States As Amicus Curiae at 29-31, *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275 (1958); Solicitor's Op. M-36675, 71 Interior Dec. 498, 518 (1964) (A. 209a).

action in state court—*Hewes* v. *All Persons*, *supra*—to confirm the validity of the contract, as provided both in the contract (Article 31, Pet. App. 203a) and in state and federal law (Section 46 of the Omnibus Adjustment Act, 43 U.S.C. 423e, Pet. App. 174a; 43 U.S.C. 511, Pet. App. 169a-170a). This suit was an *in rem* action, to which the United States was not a party, and was confined by law to the issue of the validity of the written contract between the Secretary and the District.

At the same time, Charles Malan, an individual owning more than 160 acres of land in the Imperial Valley, brought an action to challenge the contract. Insofar as pertinent here, Malan objected to the contract on the ground that he would be denied delivery of water for his excess acreage. The United States was not a party to the *Malan* litigation.[39]

The California superior court disposed of the *Malan* case together with the confirmation proceeding in *Hewes*. The court found (Pet. App. 144a):

> That under said Contract * * * the delivery of water will not be limited to 160 acres in single ownership and that the lands of the defendant Charles Malan in excess of 160 acres will not be denied water because of the size of said ownership, and that water service to lands regardless of the size of ownership will not be in any manner

[39] It was in connection with *Malan* that the District sought the Department's view on the applicability of the excess-acreage limitation to the Imperial Valley, which resulted in the Wilbur letter of 1933 (see pages 57-58, *supra*).

affected by said contract, so far as the size of individual ownership is concerned.

The court also determined (Pet. App. 149a):

> That neither the United States nor Imperial Irrigation District is limited by the terms of said contract or by any law applicable thereto in the delivery of water to any maximum acreage of land held in a single ownership.

Concluding that there was no invalidity, the court confirmed the contract, which judgment became final upon the parties' dismissal of their appeals.[40]

The *res judicata* effect of this judgment does not bar the decision of the court of appeals that the excess-acreage limitation is applicable to lands in the Imperial Irrigation District. The sole issue in the *Hewes* confirmation proceeding was the validity of the contract.[41] On its face, the contract was silent with re-

---

[40] We note that neither the District nor Malan wished the excess-acreage limitation to apply to the Imperial Valley. Because the *Hewes* judgment is not otherwise entitled to *res judicata* effect, however, this ground for challenging the judgment need not be considered (Pet. App. 27a n.31).

[41] "Nor is the confirmation proceeding designed to interpret the contract; it is a proceeding in rem and the only issue involved is the validity of the contract in so far as it rests on the action taken by the district." 2 R. Clark, *Waters and Water Rights* § 123.2(H), at 271 (1967) (footnote omitted). The California Supreme Court has recognized the narrow scope of a confirmation suit. See *Ivanhoe Irrigation District* v. *All Parties and Persons*, 47 Cal. 2d 597, 607, 306 P.2d 824, 829 (1957) ("The judgment [in a confirmation proceeding] is limited to a determination of the validiy of the contract"), rev'd on other grounds *sub nom. Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275 (1958), on remand, 53 Cal.2d 692, 699, 3 Cal. Rptr. 317, 320, 350 P.2d 69, 72 (1960) ("the only issue involved [in a confirmation proceeding] is the validity of the contract").

spect to the applicability of an excess-acreage restriction. Thus, the court in *Hewes* correctly found that "*under said contract* * * * the delivery of water will not be limited to 160 acres in a single ownership * * * and that water service to lands regardless of the size of ownership will not be in any manner affected *by said contract*, so far as the size of individual ownership is concerned" (Pet. App. 144a; emphasis added); for this reason, the court properly concluded that "neither the United States nor Imperial Irrigation District is limited *by the terms of said contract* * * * in the delivery of water to any maximum acreage held in a single ownership" (Pet. App. 149a; emphasis added). However, the court exceeded the bounds of its limited jurisdiction in *Hewes* when it stated more broadly "that the lands of the defendant Charles Malan in excess of 160 acres will not be denied water because of the size of said ownership" (Pet. App. 144a) and "[t]hat neither the United States nor Imperial Irrigation District is limited * * * by any law applicable * * * [to the contract] in the delivery of water to any maximum acreage of land held in a single ownership" (Pet. App. 149a). To this extent, the court improperly departed from the issue before it in *Hewes* and impermissibly addressed more general questions of the applicability of the excess-acreage limitation, not under the contract, but rather directly under the statutes.

Nor was this latter aspect of the court's decision necessary to its holding on the validity of the contract. Any determination concerning the applicability of the excess-acreage limitation pursuant to the statutes would not have rendered the contract invalid under federal law, for the contract was silent on this point and thus not inconsistent with the requirements of the statute; the applicability *vel non* of the limitation did not bear on confirmation of the contract as a matter of federal law. By the same token, any decision regarding the statutory excess-acreage limitation would not have affected the validity of the contract under state law; whether or not the limitation applied by reason of the federal statutes, the written contract accepted by the District and approved in the general election could have been confirmed and taken effect. Hence, the court of appeals correctly concluded that resolution of this question in *Hewes* was immaterial to the only issue before the court—the validity of the contract—and therefore that the court's opinion in this regard is not entitled to *res judicata* effect.[42]

Moreover, even if the California superior court had been free to pass upon the general applicability of the excess-acreage limitation to the Imperial Valley, we submit that its 1933 decision in *Hewes* should

---

[42] In contrast to the contract here, the contract in *Ivanhoe Irrigation District* v. *McCracken, supra,* explicitly "[i]ncorporat[ed] the requirements of * * * [the excess-acreage limitation of the statute and] provide[d] that project water shall not be furnished to lands in excess of 160 acres in single ownership" (357 U.S. at 285).

not foreclose re-examination of the excess-acreage issue in this case. Subsequent to 1933, there have been several legal developments pertinent to the proper resolution of this issue. Principal among these developments has been the Interior Department's continued consideration of the question, culminating in Solicitor Barry's formal opinion in 1964 that the excess-acreage limitation does apply to lands in the District; this Court's unanimous decision in 1957 in *Ivanhoe Irrigation District* v. *McCracken, supra,* which explicated, in the context of a confirmation proceeding, the excess-acreage limitation and its effect on water rights vested under state law; the Court's decision and decrees in *Arizona* v. *California, supra,* involving the Boulder Canyon Project Act and the concept of "present perfected rights"; and the decision in *California* v. *United States,* 438 U.S. 645 (1978), on which petitioners rely (79-421 Br. 58; 79-435 Br. 29 n.20, 38) to support their view of both the paramount importance of vested rights in this area and the principle of deference under the reclamation law to state policies and procedures. It cannot reasonably be doubted that, whatever the ultimate outcome, such developments bear centrally on the excess-acreage issue presented here.

In these circumstances, the question of the preclusive effect of *Hewes* is governed by the "general rule that *res judicata* is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation." *State Farm Insurance*

Co. v. *Duel*, 324 U.S. 154, 162 (1945). As the Court explained in *Commissioner* v. *Sunnen*, 333 U.S. 591, 599-600 (1948), with regard to the related doctrine of collateral estoppel:

> That principle is designed to prevent repetitious lawsuits over matters which have once been decided and which have remained substantially static, factually and legally. It is not meant to create vested rights in decisions that have become obsolete or erroneous with time * * *.
>
> * * * * *
>
> [Collateral estoppel] must be confined to situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged. * * * [W]here the [legal] situation is vitally altered between the time of the first judgment and the second, the prior determination is not conclusive.

See also *Montana* v. *United States*, 440 U.S. 147, 158-162 (1979); *Blair* v. *Commissioner*, 300 U.S. 5, 9 (1937).[43] Application of this principle is especially

---

[43] It appears that California recognizes a similar rule. See *City of Los Angeles* v. *City of San Fernando*, 14 Cal.3d 199, 228, 123 Cal. Rptr. 1, 23, 537 P.2d 1250, 1272 (1975); *Pacific Tel. & Tel. Co.* v. *City & County of San Francisco*, 197 Cal. App.2d 133, 158, 17 Cal. Rptr. 687, 701-702 (1961), and cases cited therein. As the California Supreme Court explained in *City of Los Angeles* v. *City of San Fernando*, *supra*, 14 Cal.3d at 230, 123 Cal. Rptr. at 24, 537 P.2d at 1273:

> The res judicata effect of the prior determination between the parties of a question of *law* may differ from the effect of such prior determination of a question of *fact*. * * * [T]he public interest attached to the resolution of a question of law may require that it be determined without restriction from the collateral estoppel effect of prior litigation.

See also *Greenfield* v. *Mather*, 32 Cal.2d 23, 35, 194 P.2d 1, 8 (1948) ("[res judicata] will not be applied so rigidly as to defeat the ends of justice or important considerations of policy"). But cf. *Slater* v. *Blackwood*, 15 Cal.3d 791, 796, 126 Cal. Rptr. 225, 227, 543 P.2d 593, 595 (1975) (*Greenfield* doctrine not applied in private tort suit for damages, involving no issue of public importance, where change in law occurred following original judgment).

appropriate where, as here, the underlying substantive issue is of continuing public importance. Accordingly, the 1933 decision of the California superior court in *Hewes* does not foreclose consideration of the excess-acreage issue on the merits.

For the reasons discussed above with respect to *res judicata*, notions of comity and deference to state law also pose no bar to consideration of the substantive question in this case. The court of appeals gave due regard to the interests of the state embodied in the *Hewes* decision, but concluded that the state-court judgment was not dispositive. Contrary to petitioners' assertion, nothing in the court of appeals' analysis "violates the clear congressional purpose of deference 'to the substance[,] as well as the form[,] of state water law' " (79-421 Br. 58, quoting *California* v. *United States*, *supra*, 438 U.S. at 675). Indeed, as the Court repeatedly reaffirmed in *California* v. *United States*, specific directives in federal reclamation law, such as the excess-acreage limitation, were

intended to override inconsistent state law. See 438 U.S. at 664-665 n.19, 668-669 n.21, 670-673 & n.25, 678 n.31. See also *Ivanhoe Irrigation District* v. *McCracken, supra; City of Fresno* v. *California*, 372 U.S. 627 (1963); *Arizona* v. *California, supra.*

Thus, the 1933 decision of the California superior court in *Hewes* v. *All Persons* does not prevent resolution on the merits of the applicability of the excess-acreage limitation to lands in the Imperial Irrigation District.

III. RESPONDENTS YELLEN, *ET AL.*, WHO HAVE AN INTEREST IN PURCHASING EXCESS LANDS FOR FARMING AS PROVIDED IN THE FEDERAL RECLAMATION LAW, HAD STANDING UNDER ARTICLE III TO PROSECUTE AN APPEAL FROM THE ADVERSE JUDGMENT OF THE DISTRICT COURT

Petitioners contend (79-421 Br. 64-68; 79-435 Br. 75-85) that respondents Yellen, *et al.*, intervenors below and amici in the district court, lacked standing under Article III to appeal from the decision of the district court that the excess-acreage limitation is inapplicable to the Imperial Valley. In particular, petitioners assert that these respondents have failed to show a particularized injury that would be redressed by the requested judicial relief. The court of appeals correctly rejected this argument and held that the private respondents had standing under Article III to seek appellate review of the district court's adverse judgment on the excess-acreage issue (Pet. App. 16a-22a, 65a-70a).

In his affidavit in support of intervention, Dr. Yellen stated that he resides in the District; that he and the other private respondents do not own farm land in the United States; that they wish to acquire land in the District for farming; that, if the excess-acreage limitation were applied to the District, they would attempt to purchase the excess lands under the terms and conditions set by the Secretary of the Interior; and that farm land in the District has a market value of $1200 to $1400 per acre with federal project water and of $25 to $50 per acre without such water (A. 324a). Respondents Grimsley, Vasquez, Moreno, Armstrong, Pacheco, Salazar, Diaz, Ponce, Cortez, and Miranda also filed affidavits in which they stated that they reside in the District; that they are employed as agricultural workers; that they do not own farm land in the United States; and that they desire to purchase and to farm excess land (A. 326a-345a).

These affidavits adequately establish respondents' standing under Article III to pursue an appeal on the excess-acreage issue. Respondents wish to purchase, at a price they can afford, farm land in the District that is irrigated by federal project water. If the excess-acreage limitation is applicable to the District, excess lands will no longer receive project water unless "the owners thereof * * * execute valid recordable contracts for sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior" (Section 46 of the

Omnibus Adjustment Act, 43 U.S.C. 423e, Pet. App. 175a). Moreover, "the sale prices * * * [of excess land shall be] fixed by the Secretary on the basis of its actual bona fide value at the date of appraisal *without reference to the * * * construction of the irrigation works*" (*ibid.*; emphasis added). Hence, in order for their excess lands to continue to receive project water, landowners would be required to agree to sell those lands at prices that reflect their "value as dry land rather than as irrigated or potentially irrigated land." 2 R. Clark, *Waters and Water Rights* § 120.1, at 213 (1967).[44] On the other hand, as the court of appeals found, "[i]n the absence of a requirement that landowners execute such a contract in order to receive irrigation water, it is inconceivable that any landowner would sell any land at prices substantially below current market prices. * * * [L]and will never be available at below current market prices unless Section 46 is held to be applicable" (Pet. App. 18a, 20a). Since their opportunity to purchase farm land in the District at affordable prices thus depends on the applicability of the excess-acreage limitation, respondents have " 'alleged * * * a personal stake in the outcome of the controversy' " presented in this litigation and have asserted "a distinct and palpable injury to * * * [themselves]" that is directly affected by the excess-acreage issue. *Warth* v. *Seldin*, 422 U.S. 490, 498, 501 (1975), quoting *Baker* v. *Carr*, 369 U.S. 186, 204 (1962).[45]

[44] Petitioners contend (79-421 Br. 65-66 n.46; 79-435 Br. 81-82) that the court of appeals' decision upholding the private respondents' standing in this case is inconsistent with its decision that respondents did not have standing in a companion case involving the residency requirements of reclamation law (Pet. App. 7a-13a). While we do not concede that the court of appeals correctly determined the issue of standing in the residency case, and while the residency case is not before the Court and does not bear on the issue of standing in the instant case, we do note a substantial distinction between the two cases. If divestiture of land occurs as a result of the residency requirement, the Secretary has no authority to set the terms and conditions of the sale or to fix the price without reference to the federal project. Under the excess-acreage provision, on the other hand, the Secretary has precisely that authority. Thus, there is a far greater likelihood that respondents will be benefited by a judicial decree enforcing the excess-acreage limitation than one enforcing the residency requirement.

[45] Respondents' standing is not undermined, as petitioners suggest (79-421 Br. 66); 79-435 Br. 79), by the fact that their alleged injury "is an injury shared by a large class of other possible litigants." *Warth* v. *Seldin, supra*, 422 U.S. at 501. See, *e.g.*, *United States* v. *SCRAP*, 412 U.S. 669, 686-688 (1973).

Petitioners also argue (79-435 Br. 83-85) that, because the District has now repaid one-half of the construction costs charged to it for the All-American Canal under the Boulder Canyon Project Act (Pet. App. 243a), the Secretary no longer has authority to set the sale price for excess lands, and therefore that respondents' standing has lapsed. This contention is incorrect. Section 46 of the Omnibus Adjustment Act provides (Pet. App. 175a), in the portion relied on by petitioners,

> that until one-half the construction charges against said [excess] lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior * * *.

On its face, this provision in Section 46 does not pertain to the required divestiture of excess lands, which is addressed

Respondents' standing in this case is demonstrated by the Court's recent decision in *Village of Arlington*

---

in the preceding part of the statute, but rather to the distinct issue whether the conveyance of such lands without the approval of the Secretary includes the right to receive project water for those lands. The provision was designed to remedy the particular problem under the predecessor statute

> that control [by the Secretary] of the initial sale of excess lands did not prevent introduction of a middleman who could turn a rapid and substantial profit and resell to a settler at a burdensome price. * * * The problem of uncontrolled sales by middlemen was minimized by imposing controls [in Section 46] on at least some subsequent sales of excess lands * * *. * * * By imposing restrictions on subsequent sales of excess land only until one-half of the construction charges had been repaid, Congress reached an accommodation between competing policies of eliminating the middleman and allowing the purchasing settler to alienate his land freely and realize some of its enhanced value, which might be attributable in part to the settler's effort in reclaiming the land and preparing it for culmination.

United States v. *Tulare Lake Canal Co.*, 535 F.2d 1093, 1134 n.169, 1135 n.172 (9th Cir. 1976), cert. denied, 429 U.S. 1121 (1977). See also *id.* at 1135; 2 R. Clark, *Waters and Water Rights* § 120.1, at 212 (1967); Solicitor's Op. M-36919 (Dec. 6, 1979), at 31, 37, —— Pub. Lands Dec. ——. Moreover, as the court of appeals noted in its exhaustive opinion in *Tulare Lake* that rejected the contention raised by petitioners here, an interpretation of the statute that would allow landowners to circumvent the excess-acreage limitation by repaying one-half the project charges would "frustrate the purpose of Congress to secure the division and redistribution on a nonspeculative basis of large private landholdings receiving the subsidy of government-financed irrigation benefits" (535 F.2d at 1119) and would permit "the very persons against whom the requirements of Section 46 are directed * * * [to] avoid these requirements at their option * * *" (535 F.2d at 1120). "It is irrational to suppose that Congress would have given an option to the owners of such excess lands to prevent the accomplishment

Heights v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). In *Arlington Heights*, the Village had denied an application to rezone certain property for multiple-family use in order to permit the

---

of the purposes Congress sought to achieve—an option their self-interest would often compel them to exercise" (535 F.2d at 1121). Finally, petitioners' argument has been consistently rejected by the Department of the Interior. In 1961, Solicitor Barry, in a formal opinion concurred in by Attorney General Robert F. Kennedy (68 Interior Dec. 370 (1961)), concluded that "[p]ayout [of one half of the construction charges] is not relevant to the recordable contract requirement of Section 46 of the 1926 Act" (Solicitor's Op. M-36634, 68 Interior Dec. 374, 404-405 (1961)). This administrative position was relied on by the court in *Tulare Lake* (535 F.2d at 1095, 1142-1143) and was recently adhered to by the Solicitor of the Department (Solicitor's Op. M-36919 (Dec. 6, 1979), at 55-56, —— Pub. Lands Dec. ——). See also 125 Cong. Rec. S12473 (daily ed. Sept. 13, 1979) (letter of Secretary of the Interior Andrus advising that the Department has refused under existing law to adopt the payout theory advanced by petitioners here and opposing a pending bill (S. 14) that would provide such a payout option); Solicitor's Op. M-36913, 86 Pub. Lands Dec. 306 (1979) (Secretary has authority to approve the sale price (a) upon initial sales of excess lands and (b) upon resale of excess lands until one-half the allocated construction charges have been paid). For these reasons, petitioners' argument should be rejected as "a patent misconstruction of the meaning and purpose of the clause in question" (535 F.2d at 1134). However, if the Court finds that the standing of the private respondents ceased while their appeal was pending, the appropriate course would be to vacate the judgments of both the district court and the court of appeals rather than, as petitioners suggest (79-435 Br. 85), to leave the district court's judgment outstanding. See *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-40 & n.2 (1950); R. Stern & E. Gressman, *Supreme Court Practice* § 18.4 (5th ed. 1978).

construction of racially integrated housing for low- and moderate-income tenants. The developer and various individuals then brought suit to challenge the rezoning denial on the ground that it was racially discriminatory and violated, among other provisions, the Fourteenth Amendment and the Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81, 42 U.S.C. 3601 *et seq.* Ransom, one of the individual plaintiffs, had claimed standing based on his allegation that "he seeks and would qualify for the housing * * * [the developer] wants to build in Arlington Heights" and that "if * * * [the development] were built he would probably move there, since it is closer to his job" (429 U.S. at 264). The Court found these allegations sufficient to establish standing (*ibid.*):

> The injury Ransom asserts is that his quest for housing nearer his employment has been thwarted by official action that is racially discriminatory. If a court grants the relief he seeks, there is at least a "substantial probability," *Warth* v. *Seldin*, *supra*, at 504, that the Lincoln Green project will materialize, affording Ransom the housing opportunity he desires in Arlington Heights.[46]

As in *Arlington Heights*, application of the excess-acreage limitation here will afford respondents the

---

[46] The Court has more recently formulated the test for standing to require "no more than a showing that there is a 'substantial likelihood' that the relief requested will redress the injury claimed * * *." *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 75 n.20 (1978) (citations omitted).

"opportunity" to purchase and to farm irrigable lands in the District.

Petitioners contend (79-421 Br. 67-68; 79-435 Br. 81-83) that there is not a sufficient probability in this case that excess lands would be sold, or that they would be sold to respondents, in the event that the excess-acreage limitation is held to be applicable to the District. In our view, however, it is most unlikely—indeed, it is inconceivable—that none of the excess lands would be sold if they were no longer eligible to receive project water. The Imperial Valley is undeniably devoted to agricultural use and completely dependent on the Boulder Canyon Project for water. As the court of appeals found (Pet. App. 18a-19a, 67a):

> While not all landholders might execute the contracts required by Section 46, the vast majority of the land in use in the Imperial Valley Irrigation District is engaged in agricultural production and it would be highly improbable that all of the large holdings of irrigable land would be withdrawn from agricultural use in order to avoid the requirements of Section 46. Once the appraisal process was completed, formerly large agricultural land-holdings would be available in small parcels at prices below the current market price.
>
> * * * * *
>
> While it is true that landowners cannot be forced to sell their lands, it is only reasonable to assume that some land will become available for sale rather than being put into other than agricultural uses.

This determination plainly shows an adequate likelihood that the "opportunity" respondents seek will be realized.[47]

Likewise, while it cannot be ascertained with certainty that respondents will in fact acquire the excess lands that are sold, their prospects of doing so are adequate to satisfy the test for standing. Indeed, because lands that receive project water must be owned by "an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land" (Section 5 of the Reclamation Act of 1902, 43 U.S.C. 431, Pet. App. 173a), respondents as residents of the District have a greater probability than most other people to purchase the excess lands.[48] Moreover, as the Court said in *Arlington Heights* with respect to the developer that was held to have stand-

---

[47] Moreover, there is no problem in this case, as there was in *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), that all parties necessary for complete and effective relief are not before the Court.

[48] This residency requirement is established by Section 5 of the Reclamation Act of 1902, 43 U.S.C. 431 (Pet. App. 173a). Although the Department of the Interior has not enforced this provision for some time, the only court to have considered the issue has held that the residency requirement remains a valid and binding condition under federal reclamation law. See *Yellen* v. *Hickel*, 352 F. Supp. 1300 (S.D. Cal. 1972), vacated on grounds of standing, 559 F.2d 509 (9th Cir. 1977). The Solicitor of the Department has agreed with the district court's decision on the question in *Yellen* and has concluded in a formal opinion that the residency requirement continues to be a viable restriction on the receipt of project water. See Solicitor's Op. M-36919 (Dec. 6, 1979), —— Pub. Lands Dec. ——.

ing, the inapplicability of the excess-acreage limitation is, as a practical matter (429 U.S. at 261-262),

> an absolute barrier to * * * [purchasing the land]. If * * * [respondents] secure[] the * * * relief [they] seek[], that barrier will be removed. * * * [Such relief] would not, of course, guarantee that * * * [the acquisition would be accomplished]. * * * [Respondents] would still have to secure financing, qualify * * * [as buyers], and carry through with [the purchase]. But all * * * [land acquisitions] are subject to some extent to similar uncertainties. * * * [A] court is not required to engage in undue speculation as a predicate for finding that * * * [respondents have] the requisite personal stake in the controversy.[49]

---

[49] Petitioners assert (79-421 Br. 66, 67; 79-435 Br. 79, 81) that respondents lack standing because they never attempted to procure land in the Valley and never stated the precise price at which they could afford to purchase excess lands under the reclamation law. However, respondents cannot be faulted for failing to engage in the obviously futile act of seeking to buy land at substantially less than current market prices. Similarly, since it cannot be known which tracts would eventually be sold as excess lands or when that sale would occur, respondents' failure to specify with exactitude the price they would be willing and able to pay does not detract from their standing; in any event, respondents' affidavits, fairly read, indicate that they would seek to purchase land at $25 to $50 per acre, which was their estimate of the appraised value of the land without reference to project water (A. 324a).

Moreover, petitioners' objections in this regard are highly technical and formalistic. Unlike *Warth* v. *Seldin*, *supra*, for example, where the absence of proper plaintiffs prevented the question of exclusionary zoning from being addressed

Accordingly, the private respondents had standing under Article III to appeal from the district court's adverse decision on the excess-acreage issue.[50]

---

in a meaningful and concrete fashion, the alleged inadequacies in this case do not in any way affect the conduct of the litigation or impair the ability of a court to understand and resolve the issue presented. In addition, the asserted deficiencies could be easily corrected either on remand in this case or by plaintiffs in a new action. A dismissal of the case on standing grounds, therefore, would needlessly prolong the uncertainty regarding the applicability of the excess-acreage limitation to the Imperial Valley and would allow excess lands to continue to receive federal water to which, as the court of appeals held, they are not entitled.

[50] In addition to their standing as prospective purchasers of the excess lands, the private respondents might also have standing as residents of the District who seek to live in a community comprised of small, family farms as envisioned in the reclamation law. Cf. *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979); *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). Because respondents' standing is clearly established by their interest in acquiring the excess lands, this alternative basis for their standing need not be pursued.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

LOUIS F. CLAIBORNE
Deputy Solicitor General

MARK I. LEVY
Assistant to the Solicitor General

PETER R. STEENLAND, JR.
RAYMOND N. ZAGONE
DIRK D. SNEL
Attorneys

FEBRUARY 1980

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 313833 229